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COMMISSION ON CRIME PREVENTION
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Fifth session
Vienna, 21-31 May 1996
Item 2 of the provisional agenda

ADOPTION OF THE AGENDA AND ORGANIZATION OF WORK

Provisional agenda

1. Election of officers.
2. Adoption of the agenda and organization of work.
3. Review of priority themes.
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7. United Nations standards and norms in the field of crime prevention and criminal justice.
8. Cooperation and coordination of activities with other United Nations bodies and other entities.
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10. Programme questions.
11. Provisional agenda for the sixth session of the Commission.
12. Adoption of the report of the Commission on its fifth session.

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Annotations

Item 1

In accordance with rule 15 of the rules of procedure of the functional commissions of the Economic and Social Council (E/5975/Rev.1) and with the practice established at its first session, the Commission on Crime Prevention and Criminal Justice, at its fifth session, may wish to elect five officers, that is, a Chairman, three Vice-Chairmen and a Rapporteur.

In accordance with Commission decision 1/101, the post of Chairman of the fifth session of the Commission is to be occupied by a member of the Group of Asian States and the post of Rapporteur by a member of the Group of Western European and other States.

The membership of the Commission at its fifth session is given in annex I.

Item 2

On the recommendation of the Commission at its fourth session, the Economic and Social Council adopted decision 1995/243, in which it approved the provisional agenda for the fifth session of the Commission.

The proceedings of the Commission on Crime Prevention and Criminal Justice are governed by the rules of procedure of the functional commissions of the Economic and Social Council.

The organization of work proposed for the Commission at its fifth session is given in annex II.

Item 3

The Economic and Social Council, in its resolution 1992/22, section VI, determined that the following priority themes should guide the work of the Commission in the development of a detailed United Nations crime prevention and criminal justice programme and the budget allocations for the period 1992-1996:

(a) National and transnational crime, organized crime, economic crime, including money-laundering, and the role of criminal law in the protection of the environment;

(b) Crime prevention in urban areas, juvenile and violent criminality;

(c) Efficiency, fairness and improvement in the management and administration of criminal justice and related systems, with due emphasis on the strengthening of national capacities in developing countries for the regular collection, collation, analysis and utilization of data in the development and implementation of appropriate policies.

The Commission has reviewed and reaffirmed these priority themes in all its sessions since the adoption of Council resolution 1992/22.

(a) National and transnational crime, organized crime, economic crime, including money-laundering, and the role of criminal law in the protection of the environment

(i) Implementation of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime

In its resolution 49/159, the General Assembly approved the Naples Political Declaration and Global Action Plan against Organized Transnational Crime (A/49/748, annex, sect. I.A). In the same resolution, the Assembly urged States to implement the Global Action Plan as a matter of urgency and requested the Commission to keep its implementation under regular review. In pursuance of Assembly resolution 49/159, a regional ministerial workshop on the prevention and control of organized transnational crime for Latin America and the Caribbean was organized at Buenos Aires from 27 to 30 November 1995. The recommendations of the ministerial workshop will be available to the Commission (E/CN.15/1996/2/Add.1).

The Economic and Social Council, on the recommendation of the Commission at its fourth session, adopted resolution 1995/11, on the implementation of the Naples Political Declaration and Global Action Plan, in which it requested the Commission to ensure and monitor their full implementation. In the same resolution, the Council requested the Secretary-General to initiate the process of requesting the views of Governments on the opportunity and impact of international instruments such as a convention or conventions against organized transnational crime and on the issues and elements that could be covered therein and to collect and analyse information on the structure and dynamics of organized transnational crime and on the responses of States to that problem. In addition, the Council decided that an open-ended intergovernmental working group should be established to consider the results of the analysis of the information collected by the Secretary-General in response to this request, as well as to propose further action on the implementation of the Naples Political Declaration and Global Action Plan.

In the same resolution, the Council requested the Secretary-General to submit to Member States for their consideration at the fifth session of the Commission a proposal on the creation of a central repository for existing legislative and regulatory measures and information on organizational structures designed to combat organized transnational crime. The Council also requested the Secretary-General to submit concrete proposals to the Commission for approval, in order to develop practical models and guidelines for substantive and procedural legislation in order to assist, in particular, developing countries and countries in transition, in reviewing and evaluating their legislation and in planning and undertaking reforms.

The Commission will have before it, for its consideration, a report of the Secretary-General addressing the issues outlined above (E/CN.15/1996/2).

(ii) Control of the proceeds of crime

The Economic and Social Council, in its resolution 1994/13, on control of the proceeds of crime, requested the Secretary-General to cooperate with Member States and intergovernmental organizations in disseminating principles and issues that should be addressed in substantive and procedural legislation on prevention and control of the laundering of the proceeds of crime and the control of such proceeds, for incorporation in national penal and procedural codes by Member States. The Council also requested the Secretary-General to organize, or to facilitate the organization of, regional training seminars, also for countries in transition, designed to provide criminal justice personnel with the capacity to detect, investigate, prosecute and adjudicate cases involving the laundering and control of the proceeds of crime. It further requested the Secretary-General to assist Member States in elaborating model curricula and manuals for higher legal education and in designing special courses in academic institutions on various aspects of prevention and control of the laundering of the proceeds of crime and the control of such proceeds. In the same resolution, the Council requested the Commission to continue its consideration of the issues related to prevention and control of the laundering of the proceeds of crime; in addition, the Council requested the

Secretary-General to report to the Commission at is fifth session on that subject, including recommendations for further concerted action at the global level. The Commission will have before it a report of the Secretary-General on international, regional and other initiatives for prevention and control of the laundering of the proceeds of crime (E/CN.15/1996/3).

(iii) Smuggling of illegal migrants

In its resolution 1995/10, the Council decided that the organized smuggling of illegal immigrants should be considered by the Commission at its fifth session in the context of the broader problem of organized crime. In addition, the Council requested the Secretary-General to remind Member States that had not done so of the importance of responding to the notes verbales sent to all Member States on 10 February and 9 June 1994 concerning criminal legislation and other measures taken to combat the smuggling of illegal migrants and to submit to the Commission at its fifth session an updated report on such measures, including a compilation and an analysis of the responses. The Commission will have before it the report of the Secretary-General on measures to combat the smuggling of illegal migrants (E/CN.15/1996/4).

(iv) Action against corruption

The Economic and Social Council, in its resolution 1995/14, urged States to develop and implement specific and comprehensive anti-corruption strategies to enhance accountability and to increase their capacity for the prevention, detection, investigation and prosecution of corrupt practices. In addition, the Council requested the Secretary-General to review the manual on practical measures against corruption[1] and requested the Commission to keep the issue of action against corruption under regular review. In the same resolution, the Council took note of the draft international code of conduct for public office holders in its revised form, annexed to the resolution, and requested the Secretary-General to continue consultations with Governments aimed at revising the text further and to submit it to the Commission at its fifth session for consideration and action.

The Commission will have before it a report of the Secretary-General covering the issues mentioned above and containing the draft international code of conduct for public office holders, revised in accordance with the comments and proposals submitted by Governments (E/CN.15/1996/5).

(v) International cooperation in criminal matters, including extradition

In its resolution 1995/27, on the implementation of the resolutions and recommendations of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Council, in section I of that resolution, requested the Secretary-General to convene, utilizing extrabudgetary resources, a meeting of an intergovernmental expert group to examine practical recommendations for the further development and promotion of mechanisms of international cooperation, including the United Nations model treaties on international cooperation in criminal matters, as well as for the development of model legislation on extradition and related forms of international cooperation in criminal matters.

The Commission will have before it a note by the Secretary-General on the outcome of consultations undertaken and arrangements made for convening the intergovernmental expert group (E/CN.15/1996/6).

(vi) Links between transnational organized crime and terrorist crimes

In its resolution 1995/27, section II, the Council decided to establish an open-ended intergovernmental working group, within the framework of the Commission, to consider, at its fifth session, the views of Member States sought by the Secretary-General in the implementation of Ninth Congress resolution 3, paragraph 1 (A/CONF.169/16, chap. I), and to consider measures for combating transnational organized crime, including the drafting of a code of conduct or other legal instrument, with due regard to the growing

danger of links between organized crime and terrorist crimes. The Commission will have before it a report of the Secretary-General on the links between transnational organized crime and terrorist crimes, including a summary of the views of Member States on the matter (E/CN.15/1996/7).

(vii) The role of criminal law in the protection of the environment

The Council, in its resolution 1995/27, section II, called upon the Secretary-General, as well as the United Nations Interregional Crime and Justice Research Institute and the regional institutes for the prevention of crime and the treatment of offenders, to continue research, exchange of information, training and technical cooperation facilitating the development of preventive, regulatory and other strategies on the role of criminal law in the protection of the environment, with an emphasis on: needs assessment and advisory services; assistance in the review or redrafting of legislation and the development of effective infrastructure; and training of criminal justice and regulatory agency personnel. A short summary of recent developments and activities undertaken in implementing this mandate is contained in the report of the Secretary-General on technical cooperation and advisory services of the United Nations crime prevention and criminal justice programme (E/CN.15/1996/8).

(viii) Establishment of a regional centre for training and research in crime prevention and criminal justice for the Mediterranean States

In its resolution 1995/27, section I, the Council decided to establish an open-ended intergovernmental working group during the first two days of the fifth session of the Commission to study the proposal for the establishment of a regional centre, to be based at Cairo, for training and research in crime prevention and criminal justice for the Mediterranean States.

The Secretariat received a note verbale dated 27 December 1995 from the Government of Egypt, requesting that the consideration of this matter be deferred. The Commission will have before it a note by the Secretary-General on the subject (E/CN.15/1996/9).

(b) Crime prevention in urban areas, juvenile and violent criminality

(i) Prevention of urban crime

In its resolution 1995/9, the Council adopted the guidelines for cooperation and technical assistance in the field of urban crime prevention and requested the Commission to ensure the publication of the guidelines in the most appropriate form. The Council also requested the Commission to consider practical ways of ensuring follow-up on the use and application. In its resolution 1995/27, section IV, the Council recommended that the Commission should consider the possible impact of migratory flows on urban criminality. The Commission may wish to consider further action on the use and application of the guidelines and to provide guidance to the Secretariat for follow-up to these resolutions, on the basis of an oral report to be presented by the Secretariat.

(ii) Children as victims and perpetrators of crime

The Council, in its resolution 1995/27, section IV decided that the elimination of violence against children should be considered within the priority theme "Crime prevention in urban areas, juvenile and violent criminality" in the biennium 1996-1997. In the same section of that resolution, the Council requested the Secretary-General to initiate the process of requesting the views of Member States on the elaboration of an international convention on the illicit traffic in children, which might embody elements necessary to efficiently combat that form of transnational organized crime. In addition, the Council invited the Secretary-General to consider ways of elaborating a programme of action aimed at promoting the effective use and application of relevant United Nations human rights instruments in the administration of justice with regard

to children and of United Nations standards and norms in juvenile justice. The Council requested the Secretary-General to submit a report on the implementation of the recommendations contained in its resolution 1995/27, section IV.B. Furthermore, the Council decided that the open-ended in-sessional working group of the Commission, at its fifth session, should seek ways to develop and undertake practical activities, including training, research and advisory services, to achieve the goal of preventing and eradicating violence against children. The Commission will have before it a report of the Secretary-General on children as victims and perpetrators of crime (E/CN.15/1996/10).

(iii) Elimination of violence against women

In its resolution 1995/27, section IV, the Council urged the Commission to continue to consider the elimination of violence against women within its priority themes and within the training and technical assistance efforts of the United Nations crime prevention and criminal justice programme. In addition, the Council requested the Secretary-General to seek the contributions of interested Member States, institutes in the United Nations crime prevention and criminal justice programme network, and intergovernmental and non-governmental organizations, in order to prepare a draft plan of action, in the context of crime prevention and criminal justice, on the elimination of violence against women that would provide practical and action-oriented suggestions on how to address that issue by means of, *inter alia*, legislative action, research and evaluation, technical cooperation, training and exchange of information. The Council also requested the Secretary-General to submit the draft plan of action, as well as a report on the views received, to the Commission at its fifth session for discussion by the open-ended in-sessional working group.

The Commission will have before it the report of the Secretary-General containing the text of, and the views received on, a draft plan of action on the elimination of violence against women (E/CN.15/1996/11).

In its resolution 1995/27, section IV, the Council invited the institutes in the United Nations crime prevention and criminal justice programme network to promote and undertake practical activities to eliminate violence against women, including the provision of training and advisory services, and to develop proposals on other measures that could be taken in the field of crime prevention and criminal justice to eliminate violence against women and to submit a report on those issues to the Commission at its fifth session. It should be recalled that the Commission, in its resolution 3/1, invited those institutes to undertake activities on issues relating to violence against women and children and to submit a report to the Commission at its fifth session on practical measures that could be taken to combat such violence. Pursuant to the two above-mentioned resolutions, the Commission will have before it the report of the Secretary-General on practical measures in the field of crime prevention and criminal justice to eliminate violence against women (E/CN.15/1996/12).

(c) Efficiency, fairness and improvement in the management and administration of criminal justice and related systems, with due emphasis on the strengthening of national capacities in developing countries for the regular collection, collation, analysis and utilization of data in the development and implementation of appropriate policies

In its resolution 1995/27, section III, the Council requested the Commission to review the membership and databases of the United Nations Crime and Justice Information Network, with a view to increasing the participation in the Network of Member States, relevant intergovernmental and non-governmental organizations and academic and other research institutions. In addition, the Council requested the Secretary-General to seek the contributions of Member States in order to prepare, in cooperation with the institutes comprising the United Nations crime prevention and criminal justice programme network, for the consideration of the Commission at its fifth session, a draft action plan on international cooperation and assistance with regard to statistical and computerized applications in the management of the criminal justice system, commensurate with the priorities of the United Nations crime prevention and criminal justice programme.

The Commission will have before it a report of the Secretary-General on a draft action plan on international cooperation and assistance in regard to statistical and computerized applications in the management of the criminal justice system (E/CN.15/1996/13).

Documentation

Report of the Secretary-General on the implementation of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime (E/CN.15/1996/2)

Addendum to the report of the Secretary-General: recommendations of the regional ministerial workshop on the prevention and control of organized transnational crime, held at Buenos Aires from 27 to 30 November 1995 (E/CN.15/1996/2/Add.1)

Report of the Secretary-General on international, regional and other initiatives for the prevention and control of the laundering of the proceeds of crime and the control of such proceeds (E/CN.15/1996/3)

Report of the Secretary-General on measures to combat the smuggling of illegal migrants (E/CN.15/1996/4)

Report of the Secretary-General on action against corruption (E/CN.15/1996/5)

Note by the Secretary-General on arrangements for convening an intergovernmental expert group to examine practical recommendations for the further development and promotion of mechanisms of international cooperation, including the United Nations model treaties on international cooperation in criminal matters, and for the development of model legislation on extradition and related forms of international cooperation (E/CN.15/1996/6)

Report of the Secretary-General on the links between transnational organized crime and terrorist crimes (E/CN.15/1996/7)

Report of the Secretary-General on technical cooperation and advisory services for the United Nations crime prevention and criminal justice programme (E/CN.15/1996/8)

Note by the Secretary-General on the establishment of a regional centre for training and research in crime prevention and criminal justice for the Mediterranean States (E/CN.15/1996/9)

Report of the Secretary-General on children as victims and perpetrators of crime (E/CN.15/1996/10)

Report of the Secretary-General on a draft plan of action on the elimination of violence against women (E/CN.15/1996/11)

Report of the Secretary-General on practical measures in the field of crime prevention and criminal justice to eliminate violence against women (E/CN.15/1996/12)

Report of the Secretary-General on a draft action plan on international cooperation and assistance with regard to statistical and computerized applications in the management of the criminal justice system (E/CN.15/1996/13)

Background documentation

Report of the Secretary-General on the implementation of General Assembly resolution 49/159, on the Naples Political Declaration and Global Action Plan against Organized Transnational Crime (A/50/433)

Item 4

The Economic and Social Council, in its resolution 1995/27, section IV, requested the Commission, at its fifth session, to consider, under a separate agenda item, the measures to regulate firearms commonly applicable in Member States, with a view to suppressing the use of firearms in criminal activities. In the same section of that resolution, the Council requested the Secretary-General to initiate a study on specified topics related to the subject, in order to provide the Commission, at its fifth session, with a basis for its consideration of measures to regulate firearms. The Council also requested the Secretary-General to report to the Commission at its fifth session on the implementation of Ninth Congress resolution 9 (A/CONF.169/16, chap. I), and to submit to the Commission recommendations for further concerted action at the national and transnational levels, including the possibility of seeking views of Member States on the preparation of a declaration. The Commission will have before it a report of the Secretary-General dealing with these requests and issues and including guidelines for national consultants involved in preparing country profiles, with proposals for further follow-up action (E/CN.15/1996/14).

Documentation

Report of the Secretary-General on measures to regulate firearms (E/CN.15/1996/14)

Item 5

The General Assembly, in its resolution 50/145, endorsed the resolutions adopted by the Ninth Congress and invited Governments to be guided by them.

In accordance with General Assembly resolution 46/152, annex, the Commission acts as the preparatory body for the United Nations congresses on the prevention of crime and the treatment of offenders.

For its consideration of item 5, the Commission will have before it a report of the Secretary-General on proposals for the preparations for the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (E/CN.15/1996/15).

Documentation

Report of the Secretary-General on proposals for the preparations for the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (E/CN.15/1996/15)

Background documentation

Note by the Secretary-General on the report of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (A/50/373)

Report of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Cairo from 29 April to 8 May 1995 (A/CONF.169/16/Rev.1)

Item 6

The Economic and Social Council, in its resolution 1992/22, section VII, decided that the Commission should include in its agenda a standing item on technical assistance, which would deal with the most practical course of action to be followed to render the United Nations crime prevention and criminal justice programme fully operational and enable it to respond to the specific needs of Governments.

The Economic and Social Council, in its resolution 1995/15, reaffirmed the high priority attached to technical cooperation and advisory services, stressed the importance of continuing to improve the operational capacity of the programme and strongly recommended to the Secretary-General that the interregional advisory services of the programme should be further strengthened to support technical assistance activities. In the same resolution, the Council requested the Secretary-General to provide, within the regular budget, appropriate resources for the programme to provide better planning support and backstopping for the interregional advisory services, in accordance with its resolutions 1994/16 and 1994/22 and General Assembly resolution 49/158.

Furthermore, in its resolution 1995/12, the Council requested the Secretary-General to present the results of a project to establish a clearing-house for international projects in the field of crime prevention and criminal justice to the Commission at its fifth session.

The General Assembly, in its resolution 50/146, requested the Secretary-General to facilitate the creation of joint initiatives, including bilateral activities, and the joint formulation and implementation of technical assistance projects, benefiting developing countries and countries in transition, involving interested donor countries and funding agencies, particularly the United Nations Development Programme (UNDP) and the World Bank, with a view to establishing and maintaining efficient criminal justice systems on a country-by-country basis as an essential component of developmental efforts. In the same resolution, the Assembly called upon UNDP, the World Bank and other international, regional and national funding agencies to support technical cooperation activities devoted to crime prevention and criminal justice at the country level and, in pursuance of their mandates, to include such activities in their programmes. In addition, the Assembly noted the contributions of the United Nations crime prevention and criminal justice programme to United Nations peace-keeping and special missions and encouraged the Secretary-General, as a way of strengthening the rule of law, to recommend the inclusion of the re-establishment and reform of criminal justice systems in peace-keeping operations.

For its consideration of item 6, the Commission will have before it a report of the Secretary-General on technical cooperation and advisory services of the United Nations crime prevention and criminal justice programme (E/CN.15/1996/8). The report will also contain information received from Member States pursuant to Commission resolution 4/1. In that resolution, the Commission reiterated its call to successor States that had not done so to confirm to appropriate depositories that they would continue to be bound by obligations under relevant international treaties on combating various manifestations of crime, to which their predecessor States had been parties and urged the successor States that had not done so to consider becoming parties to the international treaties on combating crime to which their predecessor States had not been parties.

Documentation

Report of the Secretary-General on technical cooperation and advisory services of the United Nations crime prevention and criminal justice programme (E/CN.15/1996/8)

Background documentation

Report of the Secretary-General on the implementation of General Assembly resolution 49/158 (A/50/432)

Item 7

The Economic and Social Council, in its resolution 1992/22, section VII, decided that the Commission should include in its agenda a standing item on existing United Nations standards and norms in the field of crime prevention and criminal justice, including their use and application. The Council, in its resolution 1993/34, section III, requested the Secretary-General to undertake an information-gathering exercise by means

of surveys on the following United Nations standards and norms in crime prevention and criminal justice: (a) the Standard Minimum Rules for the Treatment of Prisoners;[2] (b) the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169, annex), together with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;[3] (c) the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex); and (d) the Basic Principles on the Independence of the Judiciary.[4] The surveys were to be conducted over a two-year period in order to enable Member States to have sufficient time to provide replies.

In its resolutions 1994/18, the Council reaffirmed the important contribution that the use and application of United Nations standards and norms in crime prevention and criminal justice made to criminal justice systems. In the same resolution, the Council invited Member States to reply to the questionnaires on the above-mentioned United Nations standards and norms and requested the Secretary-General to submit to the Commission at its fifth session a report on the replies. The Council, in its resolution 1995/13, urged Governments that had not yet replied to the questionnaires to submit their replies in time to be included in the report of the Secretary-General.

In its resolution 1995/27, section III, the Council invited the Commission to keep the matter of prison conditions under regular review and, in particular, recommended that the open-ended in-sessional working group on United Nations standards and norms in crime prevention and criminal justice should discuss, at the fifth session of the Commission, the establishment of efficient information-gathering mechanisms to that end, taking into account the results of the United Nations survey on the use and application of the Standard Minimum Rules for the Treatment of Prisoners.[2] In section IV of that resolution, the Council requested the Secretary-General to seek the views of Member States and relevant organizations on the advisability of preparing a manual on the use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. A meeting of an expert group on victims of crime and abuse of power in the international setting was held at Vienna from 18 to 22 December 1995. The Commission will have before it the recommendations of the meeting (E/CN.15/1996/16/Add.5), including an outline of a draft manual, and the report of the meeting (E/CN.15/1996/CRP.1).

The General Assembly, in its resolution 50/181, welcomed the important work of the Commission on Crime Prevention and Criminal Justice in the field of human rights in the administration of justice, as reflected, *inter alia*, in Economic and Social Council resolution 1995/13. The Assembly appealed to Governments to include the administration of justice in their national development plans and invited Governments to provide training in human rights in the administration of justice, including juvenile justice, to all judges, lawyers, prosecutors, social workers and other professionals concerned, including police and immigration officers.

The Commission will have before it a report of the Secretary-General on United Nations standards and norms in the field of crime prevention and criminal justice (E/CN.15/1996/16), together with four reports on their use and application (E/CN.15/1996/16/Add.1-4).

The Council, in its resolution 1995/13, requested the Secretary-General to develop questionnaires on the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) (General Assembly resolution 40/33, annex), the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (General Assembly resolution 45/112, annex) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113, annex), to be considered by the Commission at its fifth session, with a view to requesting the Secretary-General to submit a report on the replies to the Commission at a subsequent session. The Commission will have before it a note by the Secretary-General on the draft questionnaire on United Nations standards and norms in juvenile justice (E/CN.15/1996/17).

The Commission, in its resolution 4/2, requested the Secretary-General to seek more con States on the advisability and on the specific content of the draft minimum rules for the admi criminal justice (E/CN.15/1994/11) and to submit an analytical report, including options on hov in that matter, to be considered by the Commission at its fifth session. The Commission will h the report of the Secretary-General on the development of minimum rules for the administratio justice (E/CN.15/1996/18).

Pursuant to Economic and Social Council resolutions 1745 (LIV) and 1989/64, the Secre submitted to the Council, at its substantive session of 1995, a report on capital pun implementation of the safeguards guaranteeing the protection of the rights of those facing the d (E/1995/78 and Add.1 and Corr.1). In its resolution 1995/57, the Council requested the Co examine the report at its fifth session. In order to facilitate the discussion on that matter, th General invited Governments that had not responded to the previous survey to provide the Sec their views, as well as with all relevant information on the issue. Accordingly, the Commissi before it an updated report of the Secretary-General on capital punishment and implement safeguards guaranteeing the protection of the rights of those facing the death penalty (E/CN.1

Documentation

Report of the Secretary-General on United Nations standards and norms in the field of crim and criminal justice (E/CN.15/1996/16)

Addendum to the report of the Secretary-General: use and application of the Standard Mi for the Treatment of Prisoners (E/CN.15/1996/16/Add.1)

Addendum to the report of the Secretary-General: use and application of the Code of Con Enforcement Officials, together with the Basic Principles on the Use of Force and Firea Enforcement Officials (E/CN.15/1996/16/Add.2)

Addendum to the report of the Secretary-General: use and application of the Declarat Principles of Justice for Victims of Crime and Abuse of Power (E/CN.15/1996/16/Add.3

Addendum to the report of the Secretary-General: use and application of the Basic Prin Independence of the Judiciary (E/CN.15/1996/16/Add.4)

Addendum to the report of the Secretary-General: recommendations of the meeting of the on victims of crime and abuse of power in the international setting, held at Vienna 22 December 1995 (E/CN.15/1996/16/Add.5)

Report of the meeting of the expert group on victims of crime and abuse of power in the setting, held at Vienna from 18 to 22 December 1995 (E/CN.15/1996/CRP.1)

Note by the Secretary-General on the draft questionnaire on United Nations juvenile just and norms (E/CN.15/1996/17)

Report of the Secretary-General on the development of minimum rules for the administratio justice (E/CN.15/1996/18)

Report of the Secretary-General on capital punishment and implementation of th guaranteeing the protection of the rights of those facing the death penalty (E/CN.15/1996

Item 8

The Economic and Social Council, in its resolution 1992/22, section IV, requested the Commission to cooperate closely with other United Nations bodies and the specialized agencies in order to increase the efficiency and effectiveness of United Nations activities in areas of mutual concern and to ensure proper coordination and avoidance of duplication. In addition, the Council urged the Commission to cooperate closely with intergovernmental and non-governmental organizations in the development and implementation of the programme. The Council also recommended that the Secretary-General should undertake, *inter alia*, the coordination and integration of the activities of the interregional, regional and associate institutes cooperating with the United Nations in the field of crime prevention and criminal justice.

The General Assembly, in its resolution 49/158, requested the Secretary-General further to strengthen cooperation between the Crime Prevention and Criminal Justice Branch and the United Nations International Drug Control Programme (UNDCP). In the same resolution and in its resolution 50/146, the Assembly requested the Secretary-General to take all necessary measures to assist the Commission on Crime Prevention and Criminal Justice, as the principal policy-making body in the field of crime prevention and criminal justice, in performing its functions and to ensure the proper coordination of all relevant activities in the field, in particular with the Commission on Human Rights and the Commission on Narcotic Drugs.

In its resolution 3/5, the Commission on Crime Prevention and Criminal Justice requested the Secretary-General to ensure continued coordination of the activities of the Crime Prevention and Criminal Justice Branch and UNDCP. In addition, the Commission requested those two entities to report jointly and annually to it and to the Commission on Narcotic Drugs on progress achieved in strengthening coordination. The Commission on Narcotic Drugs made a similar request in its resolutions 1 (XXXVII) and 9 (XXXVIII).

The Commission on Crime Prevention and Criminal Justice will have before it a report of the Secretary-General on cooperation and coordination of activities in crime prevention and criminal justice, including activities of UNDCP (E/CN.15/1996/20), as well as a report on activities of the institutes comprising the United Nations crime prevention and criminal justice programme network (E/CN.15/1996/21).

The Tenth Joint Programme Coordination Meeting of the United Nations Crime Prevention and Criminal Justice Programme Network was held at Courmayeur, Italy, from 17 to 18 October 1995. The Commission will have before it the report of the Tenth Meeting (E/CN.15/1996/CRP.2).

In its resolution 50/147, the General Assembly commended the African Institute for the Prevention of Crime and the Treatment of Offenders for the activities that it had undertaken, despite its difficulties in fulfilling its mandate, and appealed to Governments and intergovernmental and non-governmental organizations to provide financial and technical support to the Institute to enable it to fulfil its objectives. In addition, the Assembly requested the Secretary-General to ensure that the Institute was provided with adequate funds, within the overall appropriation of the programme budget and from extrabudgetary resources, and to submit proposals for any necessary additional funding, in accordance with Assembly resolution 49/156 and decision 49/480. The Assembly also requested the Secretary-General to ensure proper follow-up with all concerned on the implementation of its resolution 50/147, and to report thereon to the Assembly at its fifty-first session and to the Commission on Crime Prevention and Criminal Justice at its fifth session.

The Commission will have before it the report of the Secretary-General, presented to the General Assembly at its fiftieth session, on the African Institute for the Prevention of Crime and the Treatment of Offenders (A/50/375).

Documentation

Report of the Secretary-General on cooperation and coordination of activities in crime prevention and criminal justice, including activities of the United Nations International Drug Control Programme (E/CN.15/1996/20)

Report of the Secretary-General on activities of the institutes comprising the United Nations crime prevention and criminal justice programme network (E/CN.15/1996/21)

Report of the Tenth Joint Programme Coordination Meeting of the United Nations Crime Prevention and Criminal Justice Programme Network, held at Courmayeur, Italy, from 17 to 18 October 1995 (E/CN.15/1996/CRP.2)

Background documentation

Report of the Secretary-General on the African Institute for the Prevention of Crime and the Treatment of Offenders (A/50/375)

Items 9 and 10

In its resolution 50/146, the General Assembly reaffirmed the importance of the United Nations crime prevention and criminal justice programme and the crucial role it had to play in promoting international cooperation. It requested the Secretary-General to continue strengthening the programme by providing it with the resources necessary for the full implementation of its mandates, including follow-up action to the Naples Political Declaration and Global Action Plan and to the Ninth Congress.

In the same resolution, the Assembly stressed the importance of continuing to improve the operational activities of the programme, particularly in developing countries and countries in transition. It called upon States and funding agencies to make significant financial contributions for operational activities for crime prevention and criminal justice, and encouraged all States to make voluntary contributions for that purpose to the United Nations Crime Prevention and Criminal Justice Fund.

The Assembly, in the same resolution, reaffirmed the importance of rule 28 of the rules of procedure of the functional commissions of the Economic and Social Council* and urged the Secretary-General to provide the appropriate information to the Commission. In addition, the Assembly requested the Secretary-General to take all necessary measures to provide improved services, at its future sessions, to the Commission on Crime Prevention and Criminal Justice, with a view to ensuring full implementation of the relevant Commission resolutions on strategic management by the Commission in the context of United Nations rules and regulations.

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*Rule 28 reads as follows (E/5975/Rev.1):

"1. Before a proposal involving the expenditure of United Nations funds is approved by the commission, the Secretary-General shall prepare and provide to the commission an estimate of the programme budget implications of implementing the proposal. The Chairman shall draw attention to that estimate and invite discussion on it when the proposal is considered by the commission.

"2. Any programme budget proposal recommended by the commission to the Council for its approval must be stated in terms of the objectives to be achieved."

In its resolution 50/214, the Assembly approved the upgrading of the Crime Prevention and Criminal Justice Branch to a division, the reclassification of the D-1 post of the Chief of the Branch to the D-2 level and the establishment of two P-3 posts. In addition, the Assembly requested the Secretary-General to review the adequacy of resources made available for crime prevention activities at the regional level and to report thereon to the General Assembly at its fifty-first session.

In the same resolution, the Secretary-General was requested to report to the Assembly on the status of implementation of the strategic management plan of the Crime Prevention and Criminal Justice Division as adopted by the Commission in its resolution 1/1, including, *inter alia*, those activities that had achieved demonstrable results in combating international crime, assisting international law enforcement or otherwise meeting current mandates of the United Nations Congress on the Prevention of Crime and the Treatment of Offenders and the Commission.

At its fourth session, the Commission adopted resolution 4/3, on the provision of information in accordance with the plan for strategic management by the Commission on Crime Prevention and Criminal Justice of the United Nations crime prevention and criminal justice programme. In that resolution, the Commission decided that, commencing with its fifth session, a standing item should be included in its agenda so that it might review the extent to which activities had been successfully implemented in accordance with its resolution 1/1 and the information provided in accordance with the annex to its resolution 4/3. In addition, the Commission requested the Secretary-General to provide Member States with the necessary assistance to implement resolution 4/3, including the provision of information on the availability of resources.

The Commission will have before it excerpts from the report of the Secretary-General on the programme performance of the United Nations for the biennium 1994-1995 (A/51/...), as well as a report of the Secretary-General on strategic management (E/CN.15/1996/22). The Commission will also have before it for its information section 13 of the programme budget for the biennium 1996-1997 (A/50/6/Rev.1).

The medium-term plan of the United Nations is the principal policy directive for the Organization, and serves as the framework for the formulation of biennial programme budgets. The contribution to the draft medium-term plan for the period 1998-2001 covering programme 8 (Crime prevention and criminal justice) is contained in a conference room paper (E/CN.15/1996/CRP.3). The General Assembly, in its resolution 47/214, section I, emphasized the importance of the contribution of intergovernmental bodies in reviewing the plan. The Commission may therefore wish to take note of the draft medium-term plan and to provide any comments thereon which it may deem appropriate. Its comments would then be forwarded to the Committee for Programme and Coordination and the Advisory Committee on Administrative and Budgetary Questions, which will review the entire plan prior to its submission to the Economic and Social Council and the General Assembly.

Documentation

Report of the Secretary-General on strategic management (E/CN.15/1996/22).

Contribution to the draft medium-term plan for the period 1998-2001 covering programme 8 (Crime prevention and criminal justice) (E/CN.15/1996/CRP.3)

Background documentation

Section 13 of the programme budget for the biennium 1996-1997 (A/50/6/Rev.1)

Item 11

In accordance with rule 9 of the rules of procedure of the functional commissions of the Economic and Social Council, the Commission will have before it the provisional agenda for its sixth session, together with an indication of the documents to be submitted under each agenda item and the legislative authority for their preparation.

Documentation

Note by the Secretariat on the provisional agenda and documentation for the sixth session of the Commission (E/CN.15/1996/L...)

Item 12

The report of the Commission on its fifth session will be submitted to the Economic and Social Council at its substantive session of 1996.

The attention of the Commission is drawn to Economic and Social Council resolution 1989/114, section II, in which the Council requested its subsidiary bodies to highlight policy recommendations and decisions resulting from their deliberations, for consideration and appropriate action by the Council.

Notes

[1]*International Review of Criminal Policy*, Nos. 41 and 42 (United Nations publication, Sales No. E.93.IV.4).

[2]*First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955: report prepared by the Secretariat* (United Nations publication, Sales No. 1956.IV.4), annex I.A.

[3]*Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.2, annex.

[4]*Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2, annex.

Annex I

MEMBERSHIP OF THE COMMISSION ON CRIME PREVENTION AND CRIMINAL JUSTICE AT ITS FIFTH SESSION, TO BE HELD AT VIENNA FROM 21 TO 31 MAY 1996

	Year in which term expires (on 31 December)
Angola	1997
Argentina	1997
Austria	1996
Belarus	1997
Brazil	1996
Burundi	1997
Canada	1997
China	1997
Colombia	1996
Congo	1996
Costa Rica	1997
Cuba	1996
Finland	1996
France	1997
Germany	1996
Hungary	1996
Indonesia	1997
Iran (Islamic Republic of)	1997
Italy	1997
Japan	1996
Madagascar	1997
Malawi	1996
Malaysia	1996
Mexico	1997
Morocco	1996
Nicaragua	1997
Nigeria	1997
Pakistan	1996
Paraguay	1997
Poland	1997
Republic of Korea	1997
Russian Federation	1996
Sri Lanka	1996
Sudan	1996
Thailand	1997
Tunisia	1996
Uganda	1996
United Republic of Tanzania	1996
United States of America	1997
Zaire	1996

Annex II

PROPOSED ORGANIZATION OF WORK FOR THE FIFTH SESSION OF THE COMMISSION ON CRIME PREVENTION AND CRIMINAL JUSTICE

1. The proposed organization of work for the fifth session of the Commission on Crime Prevention and Criminal Justice, set out below, has been prepared pursuant to relevant decisions of the General Assembly and the Economic and Social Council. Its purpose is to facilitate the consideration of agenda items within the time available, taking into account the conference facilities allocated to the Commission. The proposed organization of work and timetable have been prepared on the understanding that the Commission will accept the request of the Government of Egypt (E/CN.15/1996/9) to defer consideration of the proposal for the establishment of a regional centre for training and research in crime prevention and criminal justice for the Mediterranean States and that, consequently, the working group intended to consider that matter, in pursuance of Council resolution 1995/27, section I, will not be established during the fifth session of the Commission.

2. The proposed timetable should be considered as purely indicative in character. Once the Commission completes the general discussion of an item before an indicated time, it may wish to move immediately to the next item on its work schedule.

3. In pursuance of Economic and Social Council resolution 1995/11, a working group (to be called working group I) will be established, within the framework of the Commission, at its fifth session, to consider the results of the analysis of the information collected by the Secretariat on the structure and dynamics of organized transnational crime, and the views of Governments on the opportunity and impact of a convention or conventions against organized transnational crime and on the issues and elements that could be covered therein, as well as to propose further action on the implementation of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime (A/49/748, annex, sect. I.A).

4. In accordance with Economic and Social Council resolution 1995/27, section II, a working group (to be called working group II) will be established, within the framework of the Commission at its fifth session, to consider the views of Member States sought by the Secretary-General in the implementation of resolution 3, paragraph 1, of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Cairo from 29 April to 8 May 1995 (A/CONF.169/16, chap. I). That working group will also consider measures for combating transnational organized crime, including the drafting of a code of conduct or other legal instrument, with due regard to the growing danger of links between organized crime and terrorist crimes.

5. In pursuance of Economic and Social Council resolution 1993/34, section III, a working group (to be called working group III) will discuss, *inter alia*, the role of the United Nations in promoting the use and application of the Standard Minimum Rules for the Treatment of Prisoners;[a] the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169, annex), together with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;[b] the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex); and the Basic Principles on the Independence of the Judiciary.[c] The Council, in its resolution 1995/13, invited that working group to undertake an overall review of the information-gathering system, including ways of further improving that system.

6. In pursuance of Council resolution 1995/27, section IV, paragraph 29, a working group (to be called working group IV) will consider the views of Member States, institutes comprising the United Nations crime prevention and criminal justice programme network, and intergovernmental and non-governmental organizations on a draft plan of action, in the context of crime prevention and criminal justice, on the elimination of violence against women. In pursuance of Council resolution 1995/27, section IV, paragraph 25, the working group will also seek ways to develop and undertake practical activities, including

training, research and advisory services, to achieve the goal of preventing and eradicating violence against children. In pursuance of Council resolution 1995/27, section III, paragraph 7, the same working group will also consider a draft action plan on international cooperation and assistance with regard to statistical and computerized applications in the management of the criminal justice system, commensurate with the priorities of the United Nations crime prevention and criminal justice programme (E/CN.15/1996/13).

7. The Economic and Social Council, by its decision 1995/242, decided that the Commission at its fifth session, in addition to plenary meetings, should be provided with full interpretation services for a total of 14 meetings for informal consultations on draft proposals and for meetings of open-ended working groups, the precise allocation of time for the different types of meetings to be determined by the Commission at its fifth session under its agenda item entitled "Adoption of the agenda and organization of work". That decision was taken on the understanding that no more than two meetings would be held concurrently, in order to ensure maximum participation of delegations.

8. It is proposed that working groups I and II should be allocated two meetings each, while working groups III and IV should be allocated three meetings each. It is further proposed that four meetings should be allocated for informal consultations on proposals and recommendations on substantive agenda items. Consequently, the working groups, which will have at their disposal interpretation services in all official languages of the United Nations, should start their meetings on the morning of Tuesday, 21 May 1996, immediately after the opening of the session, and should continue up to and including the afternoon of Tuesday, 28 May 1996. Informal consultations on draft proposals by the Committee of the Whole should start on the morning of Wednesday, 29 May 1996, and should continue up to and including the afternoon of Thursday, 30 May 1996.

9. It is also proposed that a time-limit of 10 minutes should be set for the delivery of statements on the substantive items of the agenda.

10. Arrangements have been made to hold morning and afternoon meetings during the fifth session of the Commission. It is proposed that the meetings should be held from 10 a.m. to 1 p.m. and from 3 p.m. to 6 p.m.

Date	*Time*	*Subject*
Tuesday, 21 May 1996	Morning	Opening of the session
		Plenary
		Item 1. Election of officers
		Item 2. Adoption of the agenda and organization of work
		Item 3. Review of priority themes
		(a) National and transnational crime, organized crime, economic crime, including money-laundering, and the role of criminal law in the protection of the environment
		(b) Crime prevention in urban areas, juvenile and violent criminality

Date	*Time*	*Subject*
		(c) Efficiency, fairness and improvement in the management and administration of criminal justice and related systems, with due emphasis on the strengthening of national capacities in developing countries for the regular collection, collation, analysis and utilization of data in the development and implementation of appropriate policies
		Working group I: Follow-up to the Naples Political Declaration and Global Action Plan against Organized Transnational Crime
	1 p.m.	Closure of list of speakers on item 3
	Afternoon	*Item 3*. Continuation of general discussion
		Working group I: Follow-up to the Naples Political Declaration and Global Action Plan against Organized Transnational Crime
Wednesday, 22 May 1996	Morning	**Plenary**
		Item 3. Continuation of general discussion
		Working group II: Links between transnational organized crime and terrorist crimes
	Afternoon	*Item 3*. Continuation and conclusion of general discussion
		Working group II: Links between transnational organized crime and terrorist crimes
Thursday, 23 May 1996	Morning	**Plenary**
		Item 4. Measures to regulate firearms
		Working group III: United Nations standards and norms in crime prevention and criminal justice; and consideration of reports of the Secretary-General and review of information-gathering system
	1 p.m.	Closure of list of speakers on item 4
	Afternoon	**Plenary**
		Item 4. Continuation and conclusion of general discussion
		Item 5. Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders
		Working group III: United Nations standards and norms in crime prevention and criminal justice; and consideration of reports of the Secretary-General and review of information-gathering system

Date	*Time*	*Subject*
	5 p.m.	Closure of list of speakers on item 5
	6 p.m.	Deadline for submission of recommendations of working groups II and III
Friday, 24 May 1996	Morning	**Plenary**
		Item 5. Continuation and conclusion of general discussion
		Item 6. Technical cooperation and strengthening of the United Nations crime prevention and criminal justice programme
		Working group III: United Nations standards and norms in crime prevention and criminal justice; and consideration of reports of the Secretary-General and review of information-gathering system
	1 p.m.	Closure of list of speakers on item 6
	Afternoon	**Plenary**
		Item 6. Continuation of general discussion
		Working group IV: Draft plan of action on the elimination of violence against women; programme of action on juvenile justice and the eradication of violence against children; and draft action plan on international cooperation in computerized applications
	6 p.m.	Deadline for submission of draft proposals on items 3 and 4
Tuesday, 28 May 1996	Morning	**Plenary**
		Item 6. Continuation and conclusion of general discussion
		Item 7. United Nations standards and norms in the field of crime prevention and criminal justice
		Working group IV: Draft plan of action on the elimination of violence against women; programme of action on juvenile justice and the eradication of violence against children; and draft action plan on international cooperation in computerized applications
	Afternoon	**Plenary**
		Item 7. Continuation and conclusion of general discussion
		Working group IV: Draft plan of action on the elimination of violence against women; programme of action on juvenile justice and the eradication of violence against children; and draft action plan on international cooperation in computerized applications
	5 p.m.	Closure of list of speakers on item 7

Date	*Time*	*Subject*
	6 p.m.	Deadline for submission of draft proposals on items 5 and 6 Deadline for submission of recommendations of working group I
Wednesday, 29 May 1996	Morning	**Plenary**
		Item 7. Continuation and conclusion of general discussion
		Item 8. Cooperation and coordination of activities with other United Nations bodies and other entities
	1 p.m.	Closure of list of speakers on item 8
		Committee of the Whole: Informal consultations
	Afternoon	**Plenary**
		Item 8. Continuation and conclusion of general discussion
		Committee of the Whole: Informal consultations
	6 p.m.	Deadline for submission of draft proposals on items 7 and 8
Thursday, 30 May 1996	Morning	**Plenary**
		Items 9 and 10. Plan for strategic management and programme questions
		Consideration and action on draft proposals on items 3, 4 and 5
		Committee of the Whole: Informal consultations
	1 p.m.	Closure of list of speakers on items 9 and 10
	Afternoon	**Plenary**
		Items 9 and 10. Continuation and conclusion of general discussion
		Consideration and action on draft proposals on items 6, 7 and 8
		Committee of the Whole: Informal consultations
	6 p.m.	Deadline for submission of draft proposals on items 9 and 10
Friday, 31 May 1996	Morning	Consideration and action on any outstanding draft proposals
		Item 11. Provisional agenda for the sixth session of the Commission
	Afternoon	*Item 12.* Adoption of the report of the Commission on its fifth session
		Closure of the session

Notes

[a]See *First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955: report prepared by the Secretariat* (United Nations publication, Sales No. 1956.IV.4), annex I.A.

[b]*Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.2, annex.

[c]*Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2, annex.

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AND CRIMINAL JUSTICE
Fifth session
Vienna, 21-31 May 1996
Item 3 of the provisional agenda*

REVIEW OF PRIORITY THEMES

Implementation of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime

Report of the Secretary-General

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*E/CN.15/1996/1.

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INTRODUCTION

1. Pursuant to General Assembly resolution 49/159, the Commission on Crime Prevention and Criminal Justice, at its fourth session, reviewed the implementation of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime (A/49/748, annex), adopted by the World Ministerial Conference on Organized Transnational Crime, held at Naples, Italy, from 21 to 23 November 1994. On the recommendation of the Commission, the Economic and Social Council adopted resolution 1995/11, in which it requested the Secretary-General to initiate the process of requesting the views of Governments on the opportunity and impact of international instruments such as a convention or conventions against organized transnational crime and on the issues and elements that could be covered therein. The Council also requested the Secretary-General to collect and analyse information on the structure and dynamics of organized transnational crime and on the responses of States to that problem. The Council decided that an open-ended intergovernmental working group should be established at the fifth session of the Commission to consider the results of the work described above and to propose further action on the implementation of the Naples Political Declaration and Global Action Plan. In the same resolution, the Council requested the Secretary-General to submit to Member States for their consideration at the fifth session of the Commission a proposal on the creation of a central repository for existing legislative and regulatory measures and information on organizational structures designed to combat organized transnational crime, taking into account the capabilities of the United Nations Crime and Justice Information Network.

2. In its resolution 1995/27, section II, the Council requested the Secretary-General to consider the feasibility of establishing an integrated system for the periodic gathering and dissemination of information on national legislation in crime prevention and criminal justice and its implementation, taking into account

the current and planned capabilities of the United Nations Crime and Justice Information Network and the activities of other United Nations entities and relevant intergovernmental organizations. In addition, the Council invited Member States to cooperate in that regard, with a view to encouraging progressive alignment regarding, *inter alia*, international cooperation, extradition and other bilateral and multilateral modalities of mutual assistance in criminal matters and requested the Secretary-General to report thereon to the Commission at its fifth session. In the same section of that resolution, the Council also requested the Secretary-General to continue studying the actual situation of organized transnational crime and effective measures for its control.

3. The present report contains information provided by 20 States (Argentina, Australia, Austria, Belarus, Bolivia, Canada, Chile, Cuba, Germany, Holy See, Italy, Japan, Jordan, Malaysia, Panama, Philippines, Qatar, Republic of Korea, Saudi Arabia and Turkey), as well as the results of the continuing study of the actual situation of organized transnational crime. It also contains proposals designed to facilitate the work of the Commission in monitoring the implementation of the Naples Political Declaration and Global Action Plan and, for this reason, is accompanied by recommendations of the Regional Ministerial Workshop on Follow-up to the Naples Political Declaration and Global Action Plan against Organized Transnational Crime, held at Buenos Aires from 27 to 30 November 1995 (E/CN.15/1996/2/Add.1). The General Assembly, at its fiftieth session, considered a report of the Secretary-General on the implementation of its resolution 49/159 (A/50/433), which contained proposals for activities to facilitate and expedite the implementation of the Naples Political Declaration and Global Action Plan.

I. OVERVIEW OF DEVELOPMENTS IN ORGANIZED TRANSNATIONAL CRIME

4. The Naples Political Declaration and Global Action Plan placed increased emphasis on the accumulation of a critical mass of reliable knowledge on organized transnational crime, its structure and dynamics. Such knowledge was viewed as a prerequisite for informed decision-making and concerted action at the national and international levels. That point was made by the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Cairo from 29 April to 8 May 1995, by the Commission at its fourth session and by the Council in its resolutions 1995/11 and 1995/27. States have also emphasized the need for improved knowledge and the role that the United Nations can play in its accumulation and dissemination. In recent years, organized transnational crime has developed into a new form of geopolitics, with its own character, logic, structures and support systems. This geopolitical perspective is important in organizing both existing and new knowledge about organized transnational crime.

5. The geopolitics of organized transnational crime differs in many respects from traditional geopolitics, in which control of natural resources and of critical geographical areas is central to success. The new geopolitics rests on a series of interlocking and complementary features of global politics and economics that helps to explain not only the growth of organized transnational crime, but also why it has become such a formidable problem for the international community.

A. The diversity of transnational criminal organizations

6. Part of the problem for the international community in trying to deal with organized transnational crime is that there is no single organizational or behavioural paradigm that provides a constant and accessible target. Criminal organizations vary in size, scale, bonding mechanisms, the range of activities, their geographical scope, their relationships with the power structures in home and host States, their internal organizations and structures, and the combination of instruments that they use both to promote their criminal enterprises and to protect themselves against government and law enforcement efforts. When national and cultural differences are taken into account, the diversity becomes even more salient, and more problematic for law enforcement, especially in host States. At the national level, measures that work effectively against one organized criminal group, for example, may prove far less effective against others. In the United States of

America, wiretapping and electronic surveillance have allowed law enforcement to make great inroads against the Mafia. Yet the same tools have proved far less effective against, for example, Chinese or Nigerian criminal organizations that are able to use a variety of dialects to protect themselves against electronic eavesdropping. As noted in a report of the United States General Accounting Office: "The Chinese language, which consists of numerous dialects, presents significant barriers, as does the language often spoken by Jamaican 'posse' members [, which consists of a dialect] known as 'patois'. ... Police noted that a severe shortage of qualified interpreters complicates investigations of these criminal gangs. Wiretaps of conversations in foreign languages are useless, for example, if not monitored by someone who understands the language. In one fraud case, an average of seven to nine languages were recorded on federal wiretaps, including Chinese and Hebrew." Similarly, obtaining informants or penetrating tightly knit ethnic groups by using undercover agents has become much more problematic. Even where law enforcement instruments are in place and have proved their effectiveness, the transnational nature and increasing diversity of criminal organizations have rendered them less effective. The problems are even greater, however, in States where these instruments are either not available or not widely used.

B. Location in a safe home base

7. In traditional geopolitics, power was linked to territory and control over critical regions was deemed to be a major strategic asset. In the new geopolitics, the crucial variable is not power so much as authority - or rather, the lack of it. Criminal organizations flourish in countries where authority has been eroded (or has never been properly established) and the State is weak. Such organizations not only thrive on political weakness and instability, but also exacerbate the consequences of the breakdown of structures of authority. That is what occurred in a number of States in the 1980s and the first half of the 1990s. It is not coincidental that what some observers have termed the era of the failed nation-State is also the era of organized transnational crime. Acting from a "sanctuary" or safe haven, criminal organizations are able to extend their criminal activities into other countries, often developing important regional networks and sometimes extending their operations globally.

8. If this poses a long-term challenge, there are more immediate threats that are also the result of massive political dislocations. One of the crucial factors in the emergence of organized crime and drug trafficking in many countries in eastern Europe and new and emerging democracies and countries with economies in transition is the weakness of the new States. Few of the countries with economies in transition have managed to put in place effective criminal justice systems to combat organized crime; they have no legislation that allows them to target criminal organizations as such or that facilitates witness protection schemes, asset forfeiture and electronic surveillance, which are some of the essential tools in the prevention and control of organized crime. Furthermore, in many of those States, banking regulations are notably lax, thereby providing an attractive environment for money-laundering, both by indigenous criminal organizations and by groups from elsewhere. Weak State capacity, however, goes beyond the absence of appropriate legislation. Massive social and economic dislocation, hyper-inflation and unemployment, a limited tax base and a multiplicity of demands on the State have contributed to the "under-funding" of law enforcement, which typically has poor transportation, limited communications systems and relatively unsophisticated computer equipment.

9. Belarus, emphasizing the difficulties mentioned above, has stated that the legislative basis aimed at combating organized transnational crime is only in the process of formation in countries with economies in transition. Belarus has also drawn attention to the ability of criminal organizations to exploit the lack of adequate legislative measures and to avoid responsibility under national legislation, since there are considerable problems in obtaining the required evidence in the territory of other States. To a large extent, this is linked to trying to prove that crimes have been committed in the sphere of credit and financial relations, when considerable financial resources belonging to States have been transferred to foreign banks under false contracts with foreign partners, as well as in connection with activities such as trafficking in arms, drugs, nuclear materials and explosives.

C. The irrelevance of borders

10. Transnational criminal organizations are able to exploit the vast increase in global trade, the increase in personal mobility and the development of instantaneous communication systems. The incentive for trading across borders because of price differentials and market conditions is as compelling for illicit enterprise as it is for licit enterprise. The result is that many States become unwilling hosts for criminal organizations that meet the demand for illicit products. The concomitant of this, of course, is that the prototypical activity for organized transnational crime is smuggling in all its forms. On the one hand organized crime deals in goods that are themselves legal but that have been exempted from custom duties, taxes or regulations in one country but not in another. On the other hand organized crime deals in illegal goods such as illicit drugs and firearms. There are also illegal services that organized crime provides: gambling, false documentation and cross-border smuggling of migrants or contract killing. In the field of finance organized crime engages in counterfeit, cheque and credit card fraud and money-laundering. In the field of labour a major method is racketeering, a term used to describe a variety of tactics such as engaging in fraudulent deals or extortion through intimidation and blackmail or the abuse of legitimate positions for illegitimate ends, as in the case of businessmen or labour union and government officials. In the field of vice, organized crime engages in trafficking in women, which involves international prostitution and sexual slavery. Drug trafficking remains among the most profitable activities of organized transnational crime, though new opportunities for high profits have also arisen and are being exploited, such as arms trafficking and toxic waste disposal.

11. According to Canada, a significant role in the internationalization of organized crime has been played by the opening of borders, together with the changes on the world political scene, the development of communication technologies and the improvement of international transportation. All of these factors have contributed at different levels to the creation of a favourable climate for the opening of new markets and have eased cross-border activities. Organized crime groups have taken advantage of that situation. Italy has stressed that the progressive globalization of national economies and the gradual opening of national borders have created a favourable environment for the growing unification and interdependence of the activities of criminal organizations. According to Italy, this process was accelerated with the fall of the iron curtain and criminal organizations already present in western Europe expanded their interests and investments to countries in eastern Europe whose economies were considered easier to penetrate.

D. The importance of host countries

12. If some States have unwittingly or unwillingly become the home countries for transnational criminal organizations, others have become host countries, in which such organizations supply markets for illicit products and engage in a wide variety of illicit activities, including money-laundering. These countries are not necessarily weak, but nevertheless find it difficult to prevent the operation of those markets and to deal with criminal organizations that are often ethnically based and therefore difficult to penetrate. States in which the demand for illicit goods and services is high may become the location of branch offices or regional headquarters for criminal organizations. On occasions, they even provide the battleground in which rival organizations vie for supremacy.

13. Western Europe, for example, has become the focus of much criminal activity, as a lucrative market, as the destination of illegal migrants, as a source of luxury cars that are stolen and exported to other countries, as a battleground for rival organizations and as an attractive locale for extortion and for the infiltration of legitimate business, leading some observers to refer to a "common market of crime".[1] This is clear from the detailed information provided by Austria, which summarized the main trends of organized crime in that country. Its most salient feature is the diversity of groups from countries in eastern and south-eastern Europe, as well as Turkey, that are operating in the country. Criminals from Albania and Yugoslavia and its former republics are particularly active. Moreover, their links with politicians and army leaders in their home countries give them a high degree of impunity. For example, for the activities of some of the ethnic Albanian criminals who have settled in Austria, the control centre is in the Kosovo area in Yugoslavia.

Drug trafficking, prostitution, arms trafficking and crimes against property are their major activities. Organizations from Bosnia and Herzegovina and Yugoslavia are also active, with one organization, known as the Belgrade group, able to call on the special forces of the Yugoslav army for the commission of violent crimes. While groups from Poland and Romania are also active, even more prominent are the Solntsevskaia, Dolgoproudnenskaia, Georgian and Chechen groups from the former Union of Soviet Socialist Republics, all of which are involved in business crime and money-laundering. Austria has also been penetrated by criminal groups from Italy, including the Camorra, and by Asian criminal organizations.

14. North America is another attractive area for criminal organizations. Canada has reported that the five major groupings of criminal organizations operating in the country are outlaw motorcycle groups and Aboriginal, Asian, eastern European and Italian organized crime groups, while there is evidence that Colombian drug cartels and the Jamaican "posses" are also active. The capacity of criminal organizations to operate both domestically and internationally provides an important cushion in the event of a government clamp-down on organized crime at home.

E. Financial infrastructure

15. Another component of the new geopolitics is the financial infrastructure. The development of a global financial system, in particular the development of the offshore banking system, has provided enormous opportunities for the concealment and transfer of funds. The speed and ease with which capital can be moved around the global financial system, as well as the opportunities for obscuring sources of capital and blending licit and illicit money, have increased with the emergence of what has been termed "megabyte money".[2] According to that view, money is now best understood as a network that includes all the world's markets: stocks, bonds, futures, currency, interest rates, options etc.[3] Because of the growing number of systems to facilitate transactions, "megabyte money" is also enormously difficult to track and to control. The sheer volume of financial business that has developed as the investment economy has given way to the transaction economy has not been matched by the development of regulatory measures.[4] Not only do the creation of new stock exchanges and the growing popularity of future options and derivatives provide new opportunities for money-laundering, but they also make effective monitoring and control virtually impossible. The system has many points of access and makes it possible to trade anonymously, to move money rapidly and easily and to obscure both the origin and ownership of capital. The mobility of capital parallels that of the transnational criminals themselves.

16. Canada has reported that it has several characteristics that make it attractive as a money-laundering centre: proximity to the huge market in the United States, the porosity of the border that it shares with that country and the volume of legitimate financial flows. In addition, its stable currency and Government, advanced financial system, free movement of funds and democratic safeguards against police powers together make Canada inviting to persons engaging in international money-laundering. In general, the more sophisticated kinds of money-laundering operations that have affected Canada have had an international component. Organized criminal groups, particularly the Mafia from Italy and the United States are responsible for much of the money-laundering activity in Canada, while law enforcement agencies in Canada and the United States have noted that Asian organized crime groups in North America have been using Indian and Pakistan underground banking systems at Vancouver to move criminal proceeds to Hong Kong and other jurisdictions. According to Canada, the stock exchange has become another vehicle for money-laundering. Cash or tainted assets can be transformed into alternate financial instruments, as well as ownership of stocks and bonds.

F. Linkages between the licit and the illicit and the problem of corruption

17. Another component of the new geopolitics consists of the linkages between the underworld and the "upper world".[5] Organized transnational crime would be far less effective and less of a threat if it were completely isolated from the licit economy and society and its institutions. In reality, however, there are all

sorts of linkages and points of convergence between the licit and the illicit. An organized criminal group frequently enters into informal alliances with legitimate businesses or uses its own legitimate firms to provide cover for its illicit operations. While this can be advantageous for the criminal organization, it can have seriously debilitating consequences for the legitimate economy. For example, it has been suggested that one of the reasons for the present debt crisis in Japan may have been multibillion-dollar bad loans to Boryokudan members. The Boryokudan, whose membership has been estimated at 80,000, assassinated the manager of a major Japanese bank at Nagoya in September 1994, apparently as a warning not to collect overdue loans. The murder sent a shock wave through the Japanese banking community, discouraging other bankers from continuing to pursue the repayment of overdue loans. The same reports have estimated that 80-90 per cent of the uncollectible loans in Japan, which could total as high as 1 million million United States dollars, may be linked to the Boryokudan, which in the 1980s moved into the real estate and stock market business with monies borrowed from credit unions and banks. This has prompted former high-ranking police officials, as well as leading economists and bankers, to speak of the "Boryokudan recession" when describing the current financial malaise in Japan.[6]

18. If transnational criminal organizations reap considerable benefits from their links with the licit business and financial sectors, they also find it both necessary and advantageous to co-opt public officials, whether to obtain official documents or export licences, to help launder the proceeds of criminal activity or to provide intelligence. The linkages may be based on bribery, coercion or a mixture of the two. Organized criminal groups have demonstrated their preference towards "systemic" corruption designed to ensure the preservation of a congenial and low-risk home base or a comfortable environment in host countries. Such a method of operation may be characterized by widespread use of bribery and favours to ensure the malleability of key positions and agencies; political funding to ensure that politicians elected to office will be indebted to the criminal organizations; carefully targeted "payoffs" to law enforcement personnel to provide intelligence; and the provision of financial incentives to members of the judiciary to ensure that the penalties for criminal activities are either not imposed or are modest.* These links between the underworld and the "upper world" have a corrosive effect on governance. Indeed, systemic corruption is one of the ways in which criminal organizations develop a symbiotic relationship with the State.

19. This issue has been raised by the Holy See. There is an array of complex matters related to the links between corruption and organized crime, particularly when not only public officials were involved, but also the private sector and individual citizens. These problems are especially serious in developing countries and in countries with economies in transition. According to the Holy See, a series of measures are needed to deal with the situation, such as codes of conduct, disciplinary rules and penal sanctions, as well as greater transparency and simplification of administrative procedures. Furthermore, according to the Holy See, there is a need for training and education in respect for the law, freedom of the press and sanctions against corporate entities and individuals involved in corruption. Finally, the Holy See has recommended the eventual establishment of an international organization for the fight against corruption and of an international centre for information and the elaboration of standards for the control of and the fight against economic crime.

G. The rise of global cities

20. The last few decades have seen the emergence of global cities characterized by the concentration of financial power and the availability of highly developed banking and financial systems. In some cases, these cities are also national capitals or administrative centres and, therefore, provide opportunities for the intersection of organized crime and the political and economic élite. Such cities also act as transportation hubs with links to each other as well as to the hinterland. Their advanced telecommunications systems

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*For an excellent discussion of corruption, see Ethan Nadelmann, *Cops Across Borders* (University Park, Pennsylvania, Pennsylvania State University Press, 1993). The way systemic corruption is used here is close to what Nadelmann terms "institutionalized corruption".

facilitate the transfer of information and money, while their large, cosmopolitan populations facilitate both anonymity and criminal contact among different ethnic and national groups. Most large global cities pose formidable challenges for Governments; and some of their districts are no-go areas for law enforcement, ideal environments for both random victimization and organized crime. Global cities also provide opportunities for criminal synergism, as different national groups pool their talent and expertise. Criminal cosmopolitanism of this kind and the ethnic diversity of global cities reflect another feature of the new geopolitics: the importance of migratory patterns, diasporas and ethnic networks.

H. Migration, diasporas and ethnic networks

21. The worldwide migration of settlers, labour migrants and asylum seekers has created ethnic diasporas in many countries that serve as nesting places and bridgeheads for persons who engage in organized transnational crime. The closed nature of ethnic communal groups, enhanced by language barriers and an often imported distrust of the police, make immigrant communities in many countries ideal recruiting and operating grounds for criminal organizations.

22. Numerous studies have demonstrated that the vast majority of migrants are law-abiding citizens. Among those who emigrate, however, are members of criminal organizations, who bring with them their criminal skills and knowledge and their criminal affiliations and contacts. Chinese, Italian, Nigerian and Russian diasporas have all contained criminal elements. This should not be surprising: when criminal organizations come under pressure in their home country, either from law enforcement or as a result of internecine warfare, one response of some of the members is to migrate to other areas or States where the risks are lower and conditions are generally more suitable to them. On some occasions, such transplanted criminal networks may become more powerful than indigenous organized criminal groups. In Australia, for example, the major criminal organizations include not only the Italian 'Ndrangheta, the Japanese Boryokudan, the Chinese Triads and home-grown criminals of Irish and British descent, but also gangs originally from Lebanon, Turkey, the United States and countries in south-east Asia, Latin America and eastern Europe.[7] As one criminologist has noted, "Australia has acquired many splendid new citizens but some particularly nasty ones too."[7] Moreover, some of the criminal groups have succeeded in establishing at least some semblance of the symbiotic relationships that they had developed in their original home countries. In a confidential assessment completed by the Australian Federal Police, it was noted that Italian organized criminal organizations had penetrated a number of government and non-government agencies and at least one political party and had entrenched themselves in legitimate business to give themselves an air of respectability.[7] Even when they have not achieved this level of penetration, transplanted criminal organizations can still pose formidable challenges to law enforcement, as Chinese organized criminal organizations seem to be doing in South Africa and Russian organized criminal organizations are doing throughout much of Europe.

23. The focus on migration, however, should not obscure the simple fact of increased mobility. The ease and speed of cross-border travel provide new opportunities for criminals while also making them more elusive. Nigerian drug trafficking groups, for example, have used this increased mobility to expand their trafficking activities into much of southern Africa. Moreover, organized crime has far more fundamental roots than migration, not the least of which is the crisis of structures of State authority that is prevalent in many parts of the world. There is also an important linkage between many of the pressures that lead to migration and the growth of organized crime. Perceived or real failures of States to satisfy demands of their citizens, the prospects of economic betterment elsewhere and the inability to provide legitimate outlets for entrepreneurial skills encourage many people either to seek another country to live in or to turn to avenues for advancement that lie outside the licit economy.

I. Parallel economy

24. In recent years, black markets or underground economies have become a global phenomenon. The scale of these markets and their overall effect on the global economy are impossible to assess as their very nature

makes it extremely difficult to obtain accurate information. Some estimates nevertheless exist. In 1988 an Italian research institute estimated that the criminal economy in Italy had amounted to 12 per cent of the national economy in the mid-1980s.[8] What is less obvious than the fact that black markets are enormously profitable is the fact that there are links between black markets in different products, as well as an often blurred line between the licit and the illicit. Black markets are both highly sophisticated and interactive. What is at work is no longer individual illegal markets, but a systemic, transnational, multisectoral "parallel economy" comprised of networks of mutually supporting "submarkets". This "parallel economy" often has its own labour exchange, distribution methods and information networks. In addition, it also has its own financial and banking system, as well as its own firms, which display a degree of entrepreneurial flair, managerial skill and organizational adaptability that matches or even surpasses that of many licit transnational businesses.

25. While criminal organizations benefit considerably from the exploitation of market demand in their host States, the impact on the economy of the home State is more problematic (leaving aside the deleterious impact on political and social life). For example, according to the Drug Enforcement Administration of the United States, the amount of money derived from drug trafficking that is flowing to the Colombian cartels has been estimated to be as much as US$ 30 billion a year.[9] The negative effect of such an amount of money on the economy of a developing country or on an economy in transition cannot be overemphasized. An influx of foreign currency of that magnitude may lead to the devaluation of the local currency which, in turn, is likely to result in the decline of local industry and an increase in speculative investment. Furthermore, the climate of violence often present in the operations of organized criminal groups discourages foreign investment and leads to domestic capital flight, as well as increased costs to the business sector as a whole because of the need to invest heavily in security.

26. Belarus has underlined some of the above-mentioned concerns, including the attraction of foreign investment in the national economy. Belarus has stated that it is important to be able to obtain reliable information on the legality of the origin of the financial resources available for investment in order to avoid the possibility of injecting into the economy capital stemming from criminal activity.

J. Strategic alliances

27. One feature of traditional geopolitics that finds a ready counterpart in the geopolitics of organized transnational crime is the prevalence of alliances. In traditional geopolitics, alliances have been used to augment national power, to provide predictability in relationships, to establish commitments and to protect the weak. In the new geopolitics, however, alliances among transnational criminal organizations resemble not traditional military alliances so much as strategic alliances among transnational corporations. This is not to suggest that all linkages among criminal organizations can be characterized as strategic alliances. The diversity of criminal groups is accompanied by wide variations in the linkages among them. Some are ephemeral, some enduring; some are based on short-term expediency or opportunism while others result from a calculation of long-term interests and benefits that reflect the same kind of strategic planning undertaken by transnational corporations. Strategic alliances, however, have several qualities that set them apart from other linkages: they are long-term, they involve "tight operating linkages", they are based on some kind of formal or tacit agreement and they are underpinned by mutual expectations of continued cooperation.[10] At the other end of the spectrum are ad hoc arrangements or one-time deals, in which criminal organizations come together for a specific transaction without any notion that the relationship will become more enduring.

28. One of the most important reasons for the formation of strategic alliances is the desire to distribute, share or reduce risks. Strategic alliances enable licit firms to tackle opportunities that might otherwise be too risky.[10] Similarly, they allow criminal organizations to make certain kinds of risk more acceptable to them. Transnational criminal organizations seek to reduce risks to their products, their personnel, their profits, their organizational integrity and their leadership. Strategic alliances can also be an important means of entering new markets that would otherwise be unavailable to one of the parties. In return the partner may

obtain access to new products. There is also an element of risk reduction in market partnerships of this kind: criminal organizations entering new regions or markets have to negotiate with the illicit power structure in order to succeed in circumventing the licit structure. The more they can engage the illicit power structure in their activities the better the prospects for success. The Colombian-Sicilian link, for example, has been crucial in the development and exploitation of major cocaine markets in western Europe. For the Sicilians the alliance has offered a new product line; for the Colombians it has offered access to existing distribution channels and local knowledge. "Think globally, act locally" is advice that is often as compelling in the criminal world as it is in the world of licit business. Strategic alliances offer a way to follow that advice.

K. Global information systems

29. Another component of the new geopolitics is the development of global information and communication systems that are linked to and complement the global financial and transportation systems. This development, however, brings with it a new set of vulnerabilities for States, especially those in the post-industrial stage of development, that could all too easily be exploited by transnational criminal organizations, as well as by criminals acting individually. Ironically, these vulnerabilities are also asymmetrical: the greater the level of sophistication, the greater the vulnerability. As societies become more dependent upon linked communication and information systems, the possibility that those systems will be compromised or disrupted becomes greater and the consequences of such incidents become more catastrophic. The disruption of the systems that facilitate national and global financial transactions, stock markets, air traffic control, the collection of taxes and the operation of social security, let alone key components of the military and intelligence and law enforcement infrastructure, could have far-reaching effects on the capacity of society and government to function effectively.

30. Sophisticated computer "hackers" not only are notoriously difficult to trace and to catch, but also represent a new form of individual empowerment that could have far-reaching, damaging consequences. One person with a computer, a modem and the requisite knowledge and skills has the capacity to wreak havoc on national and global information systems, even those that have security mechanisms and firewalls built into them. Moreover, there are multiple opportunities for the computer "hacker" to protect his or her own anonymity through a process that is the "cyberspace" equivalent of the establishment of companies as fronts. When this form of individual power is linked to the activities of transnational criminal organizations, the threat takes on new dimensions. In a recent and persuasive assessment of the nature of organized crime in the twenty-first century,[11] it has been suggested that the computer "hacker" will be an indispensable member of any serious criminal organization. To expect transnational criminal organizations to refrain from exploiting these new opportunities and vulnerabilities is wishful thinking. The growing convergence of organized crime with white-collar crime is already evident in countries with economies in transition, where licit businessmen are sometimes coerced into engaging in fraudulent activities.

31. Once transnational criminal organizations have developed their use of global information systems primarily for new avenues of financial gain, they will have the capability to inflict major damage on the system. Global information systems open up new opportunities not only for fraud and embezzlement, but also for disruption and extortion. To the extent that transnational criminal organizations feel threatened by law enforcement efforts, they might even exhibit the will to engage in disruptive activities of this kind. Alternatively, exhibiting a capacity to damage crucial nodes in the information and communications infrastructure could itself enhance the coercive power of these groups. In effect, the combination of the drug cartel or organized crime group and the computer "hacker" could prove to be both dangerous and intractable. Transnational criminal organizations are able to take full advantage of such opportunities partly because they are structured in ways that maximize flexibility and encourage innovation.

L. Political unrest and organized transnational crime

32. The post-cold war world is characterized not only by the emergence of the "global village", but also, somewhat paradoxically, by growing factiousness and fragmentation, only part of which can be attributed to the legacy of the cold war. Organized transnational crime benefits from both of these phenomena. The tendencies towards globalization and economic interdependence have provided new opportunities for criminal organizations. At the same time, the forces of disintegration ("the retribalization of large swaths of humankind by war and bloodshed: a threatened balkanization of nation-States in which culture is pitted against culture, people against people, tribe against tribe") offer other opportunities that are seized just as eagerly.[12] One of the great strengths of organized transnational crime is that it is an equal opportunity entity, exploiting developments of all kinds that can in any way be used to its advantage. Regional conflicts, for example, offer numerous opportunities for trafficking in arms. They are sometimes characterized by "arms-for-drugs" deals as ethnic groups seek ways of acquiring the means to continue their armed struggles. This has been an important feature of the conflict in the former republics of Yugoslavia, one that is likely to be replicated elsewhere. Linkages between the warring parties and criminal organizations willing to take the risks of dealing with them tend to be mutually beneficial. In some cases, however, the criminal organizations are cut out as the participants in the conflict engage in criminal activities of their own, a phenomenon one journalist has described as "fighters turned felons".[13] Italy has pointed out that the conflict in the former republics of Yugoslavia has favoured illicit activities and has rendered easier the infiltration of the economies of the countries involved in that conflict by Italian criminal groups and other criminal organizations.

33. This phenomenon seems likely to grow as ethnic factions, insurgency movements and terrorist groups all find it more difficult to obtain State sponsorship for their activities. Criminal endeavours provide one of the few substitutes enabling them to finance and sustain their political struggles. This has been reflected, for example, in the large number of Tamils who have been arrested in Europe and North America for drug trafficking. While some might have been in the drug trafficking business simply for profit, others were "clearly linked to fund-raising for the Tamil Tiger separatists".[13] In Angola, in contrast, the criminals have both gone into business for themselves and established links with organized crime: "UNITA insurgents have raised money by selling off poached elephant ivory and by throwing open State-owned diamond fields to smugglers who cut UNITA in on profits."[13] In the short term, not only do these links add to the profits that accrue to organized transnational crime, but they also tend to perpetuate conflicts and make peace more elusive. In the longer term, however, they may lead to the emergence of transnational criminal organizations that have their roots not in crime but in war. Such groups could provide particularly formidable challenges to Governments and law enforcement agencies throughout the world, as they are likely to have even fewer inhibitions about the use of violence than other criminal organizations.

M. The prevalence of network structures

34. Criminal organizations represent a new kind of "sovereign-free" actor based on what has been termed networks of affiliation that are difficult for law enforcement to penetrate. Ethnic and kinship ties, together with the slow creation of trust, are important defence mechanisms for criminal organizations, and so are network structures. The structures are resistant to disruption and have a degree of resilience that other forms of organization lack. The network is an ideal form of organization for maintaining organizational integrity. Because networks are characterized by considerable redundancy, linkages can be maintained through a variety of different connections. The connections can easily be replaced if broken, enabling the organization to reconstitute itself without great difficulty. Furthermore, even if the periphery of a network is infiltrated, the core can still be insulated. This is partly because of what is termed loose coupling. In organizations or systems where the components are tightly coupled, disturbance or dislocation in one component can create a damaging chain reaction. In contrast, "loose coupling gives time, resources, and alternative paths to cope with the disturbance and limits its impact".[14]

35. The value of network structures is increasingly being recognized in the commercial and industrial world, where some businesses are finding that alternatives to traditional hierarchy are both more efficient and more effective in terms of innovation and the achievement of goals. Transnational criminal organizations, however, have been in this position for some time and have instinctively developed a form of organization that offers distinct advantages over any other.

N. The sophistication of transnational criminal organizations

36. In addition to the development of network structures that are highly adaptable and resilient and absorb the costs inflicted by government and law enforcement operations, transnational criminal organizations have developed sophisticated strategies to manage the risks that they confront. These strategies involve efforts to prevent, control and absorb risks, especially risks to the leadership and to the integrity of the organization. The use of corruption to create an environment more suitable to crime, for example, is a means of preventing risks from arising in the home base; violence may be used to control risks by eliminating persons in government and law enforcement agencies who are pressing hard on the criminal organizations. Another control measure is to ensure that activities are compartmentalized both in terms of information and participation. The leaders are particularly well insulated by the layers of go-betweens who stand between the street crimes and the criminal headquarters. In addition, traces of criminal activity are further camouflaged by divisions of labour across boundaries. Meeting the challenge that transnational criminal organizations pose to national and international security requires not only a high degree of commitment by Governments, but also well-coordinated strategies at the national, regional and global levels that are sustained over the long term. It also requires targeting the things that transnational criminal organizations value most, namely, assets and proceeds, organizational integrity and leadership, contrary to current law enforcement efforts, which are largely designed to seize products, arrest personnel and disrupt profit-making or money-laundering activities. More comprehensive strategies that target the leaders, their accrued wealth and the organization itself are likely to have much more impact.

37. Transnational crime has grown out of the economic interdependence that has been regarded as a stabilizing and pacifying influence in international relations. Unfortunately, the same developments that have encouraged the growth of licit economic activity have, to a large extent, also helped to promote illicit activity. In a sense, organized transnational crime can be understood as the dark side of interdependence, one that poses major challenges to national and international security. At the same time, organized transnational crime is also fed by war, instability and the crisis of State authority that exists in many parts of the world. While these highly diverse sources of nourishment make it difficult to eliminate the conditions that facilitate organized transnational crime, both the structures of the criminal organizations and their risk management strategies make them formidable adversaries for Governments.

II. THE CHALLENGE POSED BY ORGANIZED TRANSNATIONAL CRIME: A COMPARATIVE ANALYSIS

38. Discussions about action against organized transnational crime often assume, sometimes implicitly, that if only Governments devoted more efforts and resources at the national level and increased cooperation at the bilateral level, they could make considerable inroads against organized transnational crime. What is rarely done when dealing with this issue, however, is to provide a net assessment, that is, an assessment of the capabilities of organized transnational crime on the one side and government and law enforcement on the other.

39. States are traditionally organized, conceptually, institutionally and operationally, to contend with problems posed by other States. States are not equipped in anything like the same way to deal with threats from transnational criminal organizations that are not only elusive, but also, for the most part, anxious to avoid direct confrontation with either the State that is used as the home base or those States where their

criminal activities are undertaken. International law and conventions designed to regulate relations among States are still ahead of international criminal law and efforts to deal with criminal activities that cross national borders. Emphasis is placed on national law, which is faced with the difficulties involved in dealing with the relative novelty of organized transnational crime. There are efforts to overcome those difficulties. Multinational law enforcement task forces, the use of extradition and mutual legal assistance treaties and the growing willingness to provide law enforcement training and judicial assistance to other countries are all part of an attempt to elaborate the instruments and mechanisms necessary to counter "sovereign-free" criminal actors. There remains, however, much to do.

40. Another related issue is that law enforcement is, by nature, predominantly reactive. This reactive nature means that the efforts and resources spent by government are out of all proportion to those spent by criminal organizations. Perhaps the best example of this is money-laundering. The act itself may take minutes, given the possibilities offered by modern technology, while the investigation of such cases may consume considerable law enforcement resources for months or even years. In short, it is easier to engage in organized criminal activities than to prevent or prosecute them.

41. Another related advantage of criminal organizations is that they have a clear and simple agenda. Criminal organizations are concerned only about maximizing profits while duly constituted authorities have to balance their actions against organized transnational crime with a variety of other considerations and objectives at acceptable risks. Rightly and legitimately, they have to be concerned about respect for human rights and civil liberties. Wiretapping, therefore, can be used only under specific circumstances and according to certain rules. Important as they are in reducing to a minimum the intrusion of the State on individual liberty, the result of these restrictions is that law enforcement is sometimes unable to act as promptly as needed in order to maximize its effectiveness. Another example of the constraints faced by Governments can be seen in the difficulty of disrupting illicit trade without also disrupting licit trade. Efforts to adopt more stringent or more comprehensive inspections inevitably conflict with the desire to facilitate free trade. The fact that competitive advantage increasingly depends not only on the quality of goods but also on the promptness of delivery adds another barrier to the imposition of greater controls. In other words, States have multiple objectives and multiple constituencies and have to accept trade-offs that, while both necessary and legitimate, undermine efficiency and effectiveness in the struggle against organized transnational crime.

42. Other characteristics of the two kinds of actors contribute to increasing the threat posed by organized transnational crime. States are essentially fixed and static, with complex and sometimes rigid organizational structures, and a high degree of transparency in their operations. Transnational criminal organizations in contrast tend to be highly mobile, elusive and largely covert organizations. States are bound by rules and regulations and are accountable to their citizens. Criminal organizations in contrast, by their very nature, violate rules and conventions, while their lack of accountability gives them enormous freedom to manœuvre. The overall availability of readily disposable resources is another relevant issue. Criminal organizations do not have parliamentary votes and strict controls on the allocation of resources, which may prevent funds from being used with dispatch and ingenuity. They do have to pay both corruption and operational costs, but these pale in comparison with the programmes many Governments need to fund.

43. All this suggests that a comparative analysis, done not in terms of raw power but in terms of each side's ability to achieve its objectives relative to the other, favours transnational criminal organizations over States. One area where this applies most clearly is what might be termed the competition in infiltration. Criminal organizations and Governments generally try to infiltrate each other. For Governments, infiltration can provide evidence that is crucial to the law enforcement effort. For criminal organizations, infiltration of the State apparatus can provide intelligence and enable the criminal group to devise and implement more effective defensive measures. For both sides, this is an important strategy. In the final analysis, however, this is something that is easier for transnational criminal organizations to achieve than it is for Governments. Governments have many points of access that are susceptible to infiltration. The infiltration of a government or a law enforcement agency requires access to, and either bribery or intimidation of, someone who is already

in place. This is not the case the other way around. Infiltration requires placement within the organization, a task made much more difficult by criminal bonding mechanisms, whether familial or ethnic, an inherent suspicion of outsiders and a propensity for violence. In short, it is much harder for law enforcement personnel to infiltrate criminal organizations, at least at a high enough level to do significant damage. Infiltration of transnational criminal organizations is a high-risk activity and the benefits are not always commensurate with the risks involved. In the case of criminal infiltration of government, the calculus is the opposite - low risk and high yield. Governments are able to compensate to some extent through a strategy of encouraging defections by members of the organizations. Defection and subsequent court testimony may provide invaluable information and inflict considerable damage on criminal organizations, as has been evident in Italy, where the revelations of the so-called *pentiti* have facilitated unprecedented victories over the Mafia. Such victories, however, are rather rare.

44. The implication of this analysis is that organized transnational crime is likely to go from strength to strength. While it is difficult to predict with great certainty or precision the future direction of organized transnational crime, a number of possibiiities can be identified, some of which involve simply the consolidation of existing trends while others involve a qualitative shift in the power and efficacy of organized transnational crime. Among the former possibilities, it is likely that there will be a consolidation of strategic alliances among criminal organizations. Just as strategic alliances have become more widespread and entrenched in the licit business world, so they are likely to become an even more central feature of the operations of transnational criminal organizations. While this is disturbing enough, the situation could become even more worrying if transnational criminal organizations follow another trend in the corporate world, that towards full-scale mergers.

45. There is also likely to be a consolidation and a gradual blurring of different kinds of crime and of the organizations perpetrating them, coupled with an increase in the level of violence threatened or implemented by transnational criminal organizations. The availability of the capabilities to engage in such threats is already apparent. Nuclear material smuggling, for example, has become rife. The fact that there have been few cases involving weapon-grade material may allay concerns about proliferation, but it does not mean that even some of the lower-grade materials could not create widespread death and destruction if used in conjunction with conventional explosives. In a similar vein, the activities of a religious sect in Japan illustrate the capacity of non-governmental groups to develop chemical weaponry. Biological toxins are also widely used in research and are not as stringently controlled as might be expected. The implication of all this is that criminal organizations could increasingly obtain access to destructive capabilities that could be used for extortion against States, cities or corporations. Proving credibility will simply require that those being extorted find evidence that the organization really does have the material to inflict considerable harm. Similarly, criminal organizations, by acquiring the expertise of skilled computer "hackers", may be able to threaten to disrupt major communications and information systems, as well as to obtain access to bank and corporate funds.

III. RESPONSES TO ORGANIZED TRANSNATIONAL CRIME

46. The preceding analysis suggests that criminal organizations have certain advantages over States and that the challenge posed by organized transnational crime, at the national and international levels, is likely to intensify rather than abate. States can, however, take certain actions that may help to avert, or postpone, some of the more troublesome scenarios. The World Ministerial Conference and the Naples Political Declaration and Global Action Plan may be regarded as a catalyst for such actions. National successes, such as the arrest of the leaders of the Cali cartel, and the priority attention given to action against organized transnational crime by world leaders on numerous occasions, including during the commemoration of the fiftieth anniversary of the United Nations, as well as the increasing willingness of the international community to place corruption under public scrutiny, are all encouraging developments.

47. The central theme in all the information provided by States on this subject is the need to furt international cooperation which, if integrated with national efforts, will form a comprehensive stra organized transnational crime. International cooperation is deemed essential at all levels, th bilateral, regional and multilateral levels, while a premium is placed on coordination and coope national and international levels.

48. Argentina has pointed out the merits of common regional strategies and measures again transnational crime, while Australia, Canada, Philippines, Republic of Korea and Turkey have dra to the growing number of their bilateral agreements on extradition and mutual assistance in crim In addition, Australia has indicated its compliance with the London Scheme Relating to the Fugitive Offenders and the Harare scheme for mutual assistance in criminal matters, establi Commonwealth, as well as its efforts to promote cooperation at the bilateral and regional level police liaison personnel to a number of its embassies. Such a course of action has been followe which has also engaged in promoting regional cooperation among its neighbouring countries as for international cooperation. Canada has referred to recent successes against organized crime laundering, such as the "operation green ice", made possible by cooperation involving the law agencies of several countries. The Philippines has emphasized that, unless there is effective a international cooperation, any attempt to combat organized transnational crime in all its dimen an exercise in futility.

49. Regarding action at the national level, responding States have indicated that they have be the Naples Political Declaration and Global Action Plan in reviewing their policies and strat organized transnational crime and in putting in place new legislative and regulatory measures, establishing new structures for the prevention and control of organized transnational crime.

50. Argentina has pointed out its understanding of the fact that organized transnationa phenomenon that requires a reformulation of traditional policies that have been conceived to res complex model of criminality. Consequently, Argentina has amended its legislation, or adopt to deal with the problem more effectively. Its legislation includes provisions that foresee the reducing or excluding sanctions for those who turn State evidence in cases of organized transna as well as the protection of witnesses and victims. The offences of participation in a criminal and conspiracy have been included in the Argentine penal code, whose envisaged reform wi number of activities in which criminal organizations engage, such as trafficking in minors organizational structures, Argentina has established new coordination mechanisms to increa Finally, Argentina is placing increased emphasis on creating a culture of legality through measures.

51. The response by Australia to the threat of organized crime has developed into a compre measures representing a "whole-system" approach, whose principal features include the specialized agency, emphasis on cooperation and coordination between the different levels of go between law enforcement agencies, legislation targeting key aspects of organized crime, a approach to the problem, based on high-quality strategic intelligence and assessments. Since n afford to be complacent in its response to organized crime, the law enforcement activities of Government have been reviewed in the light of the globalization of organized crime and the external threats to the country from that source. As a result of the review, Australia has e Commonwealth Law Enforcement Board, to be its principal adviser on law enforcement p Office of Strategic Crime Assessments, as a source of "over-the-horizon" strategic assessments emerging threats in the criminal environment.

52. Austria has, since 1993, introduced offences related to founding, participating in and l proceeds of criminal organizations. The same amendments to its Penal Code have made mon an offence. The legislation has proved effective in combating organized transnational crime, w

Austria to respond to requests for judicial cooperation. Austria also has in place legislation for the protection of witnesses in cases involving organized transnational crime, while a draft law currently under review would introduce special investigative measures, including electronic surveillance. A proposed further amendment to the Austrian Penal Code would introduce a number of measures to facilitate seizure and forfeiture of criminal proceeds, while adjusting accordingly the existing legislation on extradition and judicial cooperation. Austria has also established a special operational unit at its Ministry of the Interior to fight organized transnational crime.

53. Canadian legislation against organized transnational crime spans a broad area, placing emphasis on depriving organized criminal groups of their financial means and proceeds. Substantive legislation can be found in the Canadian Criminal Code, including the Food and Drugs Act, the Narcotic Control Act and the Proceeds of Crime Act. The latter allows bankers and financial institutions to report suspicious transactions to the police without risk of liability to customers for breach of client confidentiality. The Seized Property Management Act, which came into force in 1994, empowers the Canadian Government to manage and dispose of property representing the proceeds of crime and applies to cases where property is forfeited to the Government. The Act also permits the proceeds of disposition of such property to be shared with Canadian law enforcement agencies and with other Governments whose law enforcement agencies have participated in investigations leading to forfeiture of property. In connection with this legislation, Canada has established a Seized Property Management Office, which provides pre-seizure planning. The Proceeds of Crime (money-laundering) Act of 1991 has established record-keeping requirements in the financial services industry in order to facilitate the investigation and prosecution of offences created under Canadian legislation, making it an offence to contravene or to fail to comply with those requirements. The principal requirements imposed on financial institutions are set out in the Proceeds of Crime Regulations, which oblige financial institutions governed by the regulations to prepare a large cash transaction record when cash transactions totalling 10,000 Canadian dollars or more are made by or for the same person on the same day. The above-mentioned legislative and regulatory measures are complemented by the Mutual Legal Assistance in Criminal Matters Act of 1988 and the Immigration Act, which was amended in 1993 to respond to the new challenge posed by organized transnational crime. In terms of structures designed to improve coordination and efficiency in combating organized transnational crime, Canada has created the integrated anti-drug profiteering units and the Anti-Smuggling Initiative and has put in place a new witness protection programme.

54. Guided by the Naples Political Declaration and Global Action Plan, Chile has adopted new legislation on drug trafficking and money-laundering. The legislation is geared towards facilitating international cooperation, which Chile is actively promoting, by hosting international meetings such as the Second World Police Congress, held at Santiago from 3 to 6 October 1995*. National legislation has been supplemented by new organizational structures designed to increase the effectiveness of the prevention and control of organized transnational crime, such as the National Council for the Control of Narcotic Drugs (CONACE), the Directorate of Public Security and Information and the Council for the Defense of the State. Paying particular attention to the prevention and control of corruption, Chile has established a National Commission on Public Ethics, which has formulated a number of proposals, including one on elevating transparency of the public service to the constitutional level.

55. While not affected by organized transnational crime, Cuba had been creating the basic conditions required for an immediate response to the problem. Cuban legislation has made association with criminal intent an offence and has proscribed as punishable offences those types of behaviour associated with the most common forms of organized transnational crime, but has made no provision for controlled deliveries and electronic surveillance. The Cuban Penal Code provides for the seizure of assets acquired through the commission of a crime and of the proceeds therefrom.

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*See the note verbale dated 1 November 1995 from the Permanent Mission of Chile to the United Nations addressed to the Secretary-General (A/C.3/50/4).

56. In Japan, measures against organized crime are oriented towards striking an effective blow against both human and material resources of criminal organizations. Both legislation and law enforcement methods are geared towards achieving that goal.

57. Guided by Economic and Social Council resolution 1995/11, Panama has prepared proposed legislation against organized transnational crime, particularly with regard to trafficking in arms and stolen motor vehicles.

58. The Government of the Philippines has submitted to the national congress a number of draft laws, including a bill against terrorism, as well as legislation protecting intellectual property, copyright and trademarks.

59. The Republic of Korea has provided information on its legislative measures against organized transnational crime, which include the enactment of an Act on Confiscation against Crime of Public Officials. The Republic of Korea is pursuing a number of initiatives, including the reinforcement of immigration controls and the establishment of a special investigation unit and an institution with the responsibility to fight against organized transnational crime.

60. Another theme emphasized by several States, including Australia, Canada, Cuba, Italy, Japan and Philippines, is the need to attack the material resources of organized transnational crime. In its Crime Control Act of 1995, for example, the Philippines has moved towards money-laundering a criminal offence through measures for "punishing the funnelling, transfer or use of illegally sourced or procured funds or property to legitimate enterprises or transactions and providing penalties therefor". The effectiveness of legislation of this kind has been underlined by Australia, which has noted that confiscation of the proceeds of crime has been in effect for eight years in that country and has proved to be an effective tool in the fight against organized crime. Since December 1991, Australia has also established a Confiscated Assets Trust Fund, designed to ensure that confiscated funds are used against the criminal world.

61. Many Governments have emphasized the need for increased technical cooperation to combat organized transnational crime. Practical assistance is necessary not only to upgrade the skills of personnel and to elaborate and implement appropriate measures, but also to strengthen the technological capacity of law enforcement agencies. The need to increase the exchange of knowledge, expertise and information has also been highlighted by States. These points have been stressed by Belarus, Bolivia, Holy See, Panama and Turkey, while Japan has expressed its willingness to strengthen technical cooperation activities and to provide personnel upon request.

IV. ARRIVING AT A COMMON CONCEPT OF ORGANIZED TRANSNATIONAL CRIME

62. Several Governments, in explaining their stance towards a convention against organized transnational crime, have mentioned the lack of an agreed definition of organized transnational crime. Several other Governments do not consider the lack of an acceptable definition of organized transnational crime an insurmountable obstacle to the elaboration of such a convention. Those Governments have emphasized the need to counter this form of crime at the global level and the positive advocacy and "peer pressure" effects that such a convention would produce. Another position taken by Governments consists of placing emphasis on the threat posed by organized transnational crime rather than on the individual activities in which criminal organizations might be engaged at any given point in time. This appears to stem from the understanding that the flexibility and diversity displayed by organized transnational crime make it more productive to focus on characteristics rather than on activities.

63. While there is no generally acceptable definition of organized transnational crime, there appears to be a common understanding of the salient elements of this form of criminal activity. For example, Qatar has

provided an analysis of the elements and features of organized crime. Qatar considers organized crime to be "a continuing group of individuals who resort to crime, violence and deliberate corruption, for material gain and dominance". Analysing further the elements contained in this description, Qatar has emphasized the continuing nature of the operations of criminal organizations, as opposed to temporary or ad hoc formations, violence as a means of deterrence which is effective in preventing informants and witnesses from facilitating the work of law enforcement agencies, and the reliance of criminal groups on corruption. Profit-making and the achievement of dominance are considered the primary objectives of organized crime. Among the main features of organized crime that have been highlighted by Qatar are a pyramidic structure, with distribution of roles and functions, internal rules of allegiance and conduct, and systems of distribution of influence, which serve to avoid competition and to resolve differences and conflicts. Based on the elements contained in paragraph 12 of the Naples Political Declaration and Global Action Plan (A/49/748, annex, chap. I), Turkey has defined organized crime as crime committed by groups organized, regardless of form, for the pursuit of criminal activities by resorting to violence, intimidation or corruption for the achievement of profit.

64. It should be recalled that the Naples Political Declaration and Global Action Plan list the following six characteristics of organized crime: (a) Group organization to commit crime; (b) hierarchical links or personal relations which permit leaders to control the group; (c) violence, intimidation and corruption used to earn profits or control territories or markets; (d) laundering of illicit proceeds to further criminal activity and to infiltrate the legitimate economy; (e) the potential for expansion into any new activities beyond national borders; and (f) cooperation with other organized transnational criminal groups.

65. The greater the number of the above-mentioned characteristics or elements in a given criminal organization and the stronger their presence, the more it can be said of the criminal organization that it meets the defining criteria of organized crime.* In this vein, organized crime could be described more concisely as a form of economic commerce that uses illegal means, involving the threat and use of, *inter alia*, physical force and violence, extortion, intimidation or corruption, as well as the provision of illicit goods and services. Since organized crime is innovative and takes advantage of the particular business opportunities that are available, it is able to take on many forms. Domestic organized criminal groups typically have a layered structure; thus, street operators who engage in the provision of illicit goods and services and in extortion or violence, or threaten to use violence, are carefully isolated from high-ranking members of the group to which they belong. The high-ranking members typically operate legal organizations as fronts, which also employ non-members to project an image of respectability, thereby establishing and maintaining trust. The separation of illegal activities from legal appearance can be greatly enhanced when the "brain" and "muscle" of organized crime are physically separated. This can be further enhanced by operating legal and illegal businesses in different countries with different jurisdictions. One of the characteristics of organized crime is the utilization of interjurisdictional and international barriers to its own advantage.

66. The transnational reach of organized crime is an outflow of its inherent logic. States are separated by borders that not only divide land, but also mark different legal systems, different levels of economic development, different demand patterns and different political cultures. The exploitation of these differences is a central feature of organized transnational crime. Smuggling goods (ranging from cigarettes to stolen cars) and people (in the form of cheap illegal labour) across borders requires intelligence, contacts, protection and safe houses - in short, an organization. Border areas and other points of entry such as seaports and airports are therefore conducive to the emergence of organized transnational crime. The selective permeability of the border serves both as a source of exploitation and as a barrier to hide behind. The border exists for the law enforcement officers of the respective States (with some exceptions, as in restrictively regulated border-region

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*Some lists enumerate more than six elements. One definition offered by the Netherlands adds "the application of internal sanctions" and "making use of front firms" as additional elements (Centrale Recherche Informatiedienst, *1991 Jaarverslag* (The Hague, Centrale Recherche Informatiedienst, 1991), p. 17).

hot pursuit operations) and it exists for ordinary law-abiding citizens on both sides of the border. Some cross-border traffic, notably electronic money transfers but also air and sea traffic involving smaller craft, is notoriously hard to control. The enormous increase in the container business has made the checking of all incoming and outgoing merchandise in containers an impossibility since it would slow down world trade to unacceptable levels. The revolution in communications, including the scrambling of voice communications and the encrypting of Internet communications, has created opportunities that make transnational criminal networking an increasingly safe activity.*

V. THE OPPORTUNITY FOR A CONVENTION OR CONVENTIONS AGAINST ORGANIZED TRANSNATIONAL CRIME

67. Pursuant to Council resolution 1995/11, the Secretary-General requested the views of States on the opportunity for a convention or conventions against organized transnational crime. Ten of the 20 States that responded were favourably disposed towards a convention or conventions against organized transnational crime. Three States expressed reservations on the possibility of elaborating a general convention against organized transnational crime, while two favoured the elaboration of conventions against various aspects of organized transnational crime or on specific modalities of international cooperation against organized transnational crime. One State opposed the elaboration of any new instrument or instruments against organized transnational crime. During the World Ministerial Conference, held at Naples, support for a convention or conventions against organized transnational crime was expressed by the vast majority of the 86 speakers who made statements, while opposition to such a course of action was expressed by 3 of those speakers. Similar support for such a convention or conventions was expressed at the Ninth Congress.

68. Argentina supports the need to initiate, without delay, the preparation of a general convention against organized transnational crime. Argentina hopes that the members of the international community will deploy the necessary efforts and resources to make it possible, within a reasonable time, to embody in a general convention the political commitments of countries to combat this form of crime and to ensure mutual cooperation to that end. The conclusion of a general convention would afford the international community a single, efficient and effective instrument for responding suitably to the activities and manifestations of organized transnational crime. Argentina has drawn attention to the Buenos Aires Regional Ministerial Workshop that adopted the Buenos Aires Declaration on Prevention and Control of Organized Transnational Crime (E/CN.15/1996/2/Add.1, annex), in which 25 States from Latin America and the Caribbean put forward a number of elements that could be included in a general convention against organized transnational crime.

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*The effect of technological advances in communication on the spiriting away of illegally obtained money has been described by Stephen E. Flynn: "Drug traffickers have a vast new array of possibilities for the placement of funds as national currencies become convertible and new and largely unregulated private banking institutions spring up throughout the former Soviet bloc and the Third World. ... The integration and increased efficiency of the global banking system allows money launderers to layer money with virtual impunity. The sheer volume of electronic funds transfers makes them almost impossible to track. In 1991, for example, the Clearing House Interbank Payment System handled some 37 billion transactions worth $222 trillion" (*Report of the Workshop on Money Laundering of the Resource Committee on Transnational Crime of the International Scientific and Professional Advisory Council*, Courmayeur, Italy, 23-24 March 1992, p. 2). Referring to smuggling opportunities in the United States, Flynn noted that in a single year 430 million people, 120 million cars, 8 million cargo containers, 720,000 large and small aircraft and 290,000 ships and small boats crossed the borders of that country. A thorough inspection of just one container took five customs agents three hours to complete. Yet only 13 containers filled with cocaine would need to slip through their mesh to satisfy the illicit demand for cocaine in the United States for a year. (S. E. Flynn, "Toward an international drug agenda: the case for new strategies, new institutions, new programs" *The 1993 International Narcotics Control Strategy and the Future of US Narcotics Policy*, hearing before the Subcommittee on International Security, International Organizations and Human Rights of the Committee on Foreign Affairs of the United States, House of Representatives (103rd Congress, first session, 11 May 1993) (Washington, D.C., United States Government Printing Office, 1993).)

Argentina has proposed that the Commission on Crime Prevention and Criminal Justice should act as a preparatory body for the elaboration of the convention.

69. Australia recognizes that good arguments could be made in support of a convention against organized transnational crime. It has expressed its concerns, however, about the difficulties that could beset the negotiation of such an instrument, such as the reaching of an agreement on a universally acceptable definition on what constitutes organized transnational crime and the avoidance of duplication of existing agreements in areas such as extradition and mutual assistance in criminal matters. There is also the risk that the need to achieve consensus on the content of a convention could lead to it being concluded at a level of generality that would seriously limit its effectiveness.

70. According to Austria, in the light of the numerous and complex types of organized transnational crime, it would seem to be a difficult enterprise to draft a comprehensive convention taking into account all these different phenomena, which have their own dynamics. A more realistic approach would, therefore, be to draft internationally binding legal instruments on specific issues, such as money-laundering and related questions involving seizure of criminal proceeds, and protection of witnesses, including international cooperation in programmes to protect witnesses.

71. According to Belarus, such a convention would provide for a commitment by States to the drafting, improvement and harmonization of legislative measures against organized transnational crime. An international convention should reflect overall requirements for the legislative base of the States signing the convention, which would be directed towards improving the level of openness in the activity of banking and financial institutions.

72. Expressing its willingness to accede to an international convention against organized transnational crime, Bolivia has suggested that such a convention should incorporate the following elements: (a) the decriminalization of acts of collaborating agents, which would enable the victims of organized transnational crime to act legally as witnesses for the prosecution; (b) the adjustment of mechanisms for protecting privacy, which make possible the structure and maintenance of criminal organizations; and (c) the adoption of the principle of "penalty-free informing", i.e. reducing the penalty for informants to facilitate the prosecuting authorities.

73. At this point in time, Canada is not in favour of the elaboration of a convention against organized transnational crime in view of the difficulty of achieving consensus among States on such a broad document, and in particular on the definition of organized crime. In its view, the resources of the Commission and Member States would be better used in practical assistance projects, including projects designed to encourage full implementation of existing relevant conventions, and on the negotiation of more focused and practical treaties and conventions such as a convention on mutual assistance or money-laundering. The Naples Political Declaration and Global Action Plan have already set out the relevant principles, as well as a practical plan for action by States in response to the growing threat of organized transnational crime. Since the Naples Political Declaration and Global Action Plan have made a strong statement on behalf of the world community and have already drawn attention to this pressing issue, the focus should be on implementation and development of other practical measures and instruments to combat organized transnational crime.

74. In the view of Cuba, in order to combat organized transnational crime it is not enough to merely establish or even ratify various regional or international instruments. The most important thing is that such instruments should be put into practice and this should be the main focus of the international community.

75. Germany has referred to a number of reservations that it had raised in 1992 on the desirability of a convention or other legal instrument on international cooperation in crime prevention and criminal justice, adding that it would not recommend the elaboration of a convention or any other legal instrument on specific issues or areas in the field of combating organized transnational crime. Germany has suggested that the open-

ended intergovernmental group to be established within the framework of the Commission at its fifth session should take over the task of developing concrete and feasible proposals for the implementation of the Naples Political Declaration and Global Action Plan.

76. According to the Holy See, such a convention would be useful because of the transnational nature of the activities of criminal organizations and because of the threat that those activities posed to the security and dignity of the individual, but also to the security and stability of Governments, economic and financial institutions and the international financial system. Only a global approach will be effective in countering these threats. Consequently, the Holy See considers that harmonization of national laws and coordination of the actions of Governments are both desirable and necessary and could be achieved most expeditiously by establishing binding international legal instruments. In connection with the convention, the Holy See has underlined the importance of socio-economic and cultural factors that facilitate and strengthen organized crime and has proposed the adoption of a broad range of preventive measures. It has also directed attention at rehabilitation, guarantees for the human rights of detainees and the needs of children pushed to violence by adults, while recommending measures to deal with violence against women, children and immigrants.

77. Italy has expressed its conviction that, in the face of expanding organized transnational crime and the effects of such expansion on global financial systems, the international community should develop an organized and systematized global response. The innovative aspect of the World Ministerial Conference held at Naples was its emphasis on a global approach to organized transnational crime regardless of its manifestations. This new vision was fully reflected in the Naples Political Declaration and Global Action Plan, which foresaw the need for reliance on multilateral cooperation, stressing common action and a continuous dialogue between the competent authorities, as well as an uninterrupted flow of information. The new approach embodied in the Naples Political Declaration and Global Action Plan has already been reflected in new strategies developed in the investigation and adjudication of organized transnational crime and the creation of operational networks that have increased efficiency in the fight against this form of crime. If the first step in the right direction was an increase in awareness of the problems and challenges posed by organized transnational crime, then the second step should be the creation of international mechanisms that will ensure action-oriented inter-State cooperation, for the purpose of equalizing the risks to criminal organizations in various countries, thus arresting the expansion and internationalization of organized crime. The Naples Political Declaration and Global Action Plan have set in motion a dynamic process that should be continued with the accumulation and analysis of knowledge on the structure of organized transnational crime and the strategies designed for its prevention and control, as well as the identification of solutions that will increase effectiveness. A confirmation of the validity of this course of action was the establishment of the senior expert group on organized crime by the Group of Seven major industrialized countries and the recommendations that it had elaborated. Italy is of the opinion that the effectiveness of the implementation of the Naples Political Declaration and Global Action Plan will be maximized if, while advancing the process of elaborating a convention or conventions against organized transnational crime, a group of highly qualified national experts develop specific recommendations, which could be immediately implemented at the national level.

78. Japan is of the view that, although it is necessary to consider the formulation of extensive and comprehensive measures, including the preparation of legal norms, in order to standardize the systems of Member States against organized crime, it hardly appears that there is currently an adequate common understanding among Member States regarding the actual pattern of illegal activity in question. If States were to agree at the present stage on detailed obligatory measures intended to form a common system all over the world in the field of organized crime prevention, such measures would not be likely to match the actual situation of each particular State, making their effectiveness dubious. Japan, therefore, believes that it would be best for the United Nations to prepare guidelines and provide them to Member States in the form of options. However, according to Japan, it may be advisable for the Commission on Crime Prevention and Criminal Justice to study the preparation of an international convention that would provide a basic framework

to suppress organized transnational crime, as part of global efforts to cope with organized crime expanding across national boundaries.

79. Jordan has expressed its commitment to all international conventions related to all matters of crime prevention.

80. The Philippines has indicated that the adoption of an international convention or any instrument as a system of international cooperation would greatly enhance the action plan of the international community against organized transnational crime. However, in the absence of a general framework or model for international cooperation against organized transnational crime and in view of the diversity of legal systems, as well as the variety of the legislative agenda of countries, while desirable, it might not be appropriate and effective at present to effect world cooperation through such an international convention. Pending the formulation of such a convention, it would be appropriate to encourage the development of bilateral agreements or a multilateral arrangement that would provide for general cooperation in the areas of investigation, prosecution and extradition of offenders.

81. Qatar believes that it is important to accelerate the establishment of international cooperation in the field of action against organized transnational crime, including the formulation of bilateral and multilateral agreements. As each country has its own crime definitions, there is a need for serious and objective studies to crystallize a joint vision by the international community regarding the types of crime that it wishes to combat. Accordingly, effective action for the achievement of an international agreement on combating organized transnational crime requires coordination with neighbouring States that are similarly affected.

82. The Republic of Korea is of the opinion that the situation created by organized transnational crime demands strengthened international cooperation at all levels.

83. Turkey considers useful the elaboration of an international convention against organized transnational crime. Such a convention should cover international terrorist organizations, as well as trafficking in illicit drugs, chemicals, arms and illegal migrants.

VI. THE CREATION OF A CENTRAL REPOSITORY OF LEGISLATIVE AND REGULATORY MEASURES AGAINST ORGANIZED TRANSNATIONAL CRIME

84. In order to avoid duplication of efforts and to maximize the efficiency of the services provided by the Crime Prevention and Criminal Justice Division to its constituency, the mandates contained in Council resolutions 1995/11 and 1995/27, section II, regarding the creation of a central repository and the establishment of an integrated system for the periodic gathering of information, respectively, can only be viewed jointly. In any event, the real value of a central repository would lie in the availability of up-to-date information and would, therefore, need to be regularly reviewed and supplemented. Furthermore, such a repository would not be complete without information on international cooperation modalities, including bilateral or multilateral agreements on extradition and mutual assistance in criminal matters.

85. In their responses, Member States have reiterated the need for reliable information, which was stressed in the Naples Political Declaration and Global Action Plan, as an essential tool in the fight against organized transnational crime. Most Member States have included detailed information on their legislative and regulatory initiatives, their international cooperation arrangements and the organizational structures that they have set up to deal with the problem. Australia, for example, has indicated that it is considering providing detailed information, while Germany has expressed its concern about the fact that collection of the relevant information and provision thereof to the Division is a labour- and resource-intensive activity that is not justified in view of the Division's lack of resources to establish and update a proper collection of information. Germany is, however, prepared to provide specific information upon request. Japan has expressed its full

support for the creation of a central repository, but has cautioned against duplication of information that is routinely provided to the United Nations International Drug Control Programme (UNDCP). These concerns notwithstanding, most respondents seem in principle keen to move ahead and the quality and quantity of information provided constitute proof of the feasibility and usefulness of a central repository. In part, such a repository would complement the steps that are being taken by some Member States to establish central agencies dedicated to compiling material on organized crime at the national level.

86. The creation of a central repository should rely on the willingness of Member States and international organizations to devote the time required to provide and regularly update the relevant information. The three principal categories of information could be: (a) national legislation, including regulatory measures; (b) organizational structures; and (c) international cooperation arrangements, including bilateral and multilateral treaties, and implementing legislation. The contents of the repository would be available in electronic form through the United Nations Crime and Justice Information Network and the Internet home page of the Division, but provision would be made to make available information in non-electronic form to those Member States that do not possess the capacity for electronic access to the repository. The Division would formulate a standard format for collecting and updating the required information, consisting of multiple tables designed to group the required information in several categories, thus facilitating the provision of responses by Member States. At the initial stage, and in order to reduce the time and resources required, legislative texts would be organized and filed in hard copy, with brief summaries available in electronic form. Requesting States would be provided with copies of legislation if necessary. The Division would, when appropriate and possible, index and cross-reference legislative texts, accompanying them with a brief commentary and legislative history. While Member States would be requested to provide their legislative texts in one of the official languages of the United Nations, provision would need to be made for translation of texts when developing countries and countries with economies in transition providing such texts lack the necessary resources for translation. The repository would be updated on a yearly basis. All this would be carried out in close cooperation with UNDCP.

VII. CONCLUSION

87. The threat posed to national and international security by organized transnational crime is not the inadvertent by-product of long-term trends. On the contrary, this threat is an inevitable consequence of the activities of organizations that deny the State its legitimate monopoly of violence, corrupt State institutions, undermine the rule of law, threaten the integrity of financial and commercial sectors of society, contravene legal and social norms and conventions, transgress national sovereignty and violate national borders. The threat is qualitatively different from that posed in the past.

88. All this is largely the result of the changed context within which organized crime now operates. New opportunities have been exploited eagerly and effectively, leaving law enforcement trailing behind and working to match the inventiveness, adaptability and resilience of criminal organizations that have become transnational in both thought and deed while operating from, or finding refuge in, safe home bases or "sanctuaries".* This underlines the fact that criminal organizations carry on their activities in what for them is, in effect, a borderless world, while law enforcement is significantly constrained by having to operate in what is still for them a bordered world. Both criminal personnel and "hot money" have unprecedented mobility, aided by the exploitation of the most modern technology.

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*For example, it has been reported that Cambodia, because of lack of extradition treaties, is being used as a safe haven by between 150 and 300 of the 2,000 criminals most wanted by the International Criminal Police Organization (ICPO/Interpol) (*International Herald Tribune*, 17 August 1995).

89. Transnational criminal organizations have become a security threat, having gone beyond the issue of domestic law and order. The challenge is made more daunting by the fact that such organizations are a complex mix, with various shapes and sizes, intersecting in multiple ways with the legitimate economy and society, simultaneously amorphous and concrete, and engaged in corruption, as well as coercion and confrontation, depending on exigencies and opportunities. Meeting the challenge requires the allocation of commensurate resources by the international community and the maintenance of a strong collective political will, keeping in mind that no State can afford to be complacent in responding to organized transnational crime. Should this not be done, the long-term consequences for democratic governance and the rule of law are dismal.

90. Novel threats demand novel combinations of expertise and novel operational capabilities. If the international community is to respond effectively to the threat posed by transnational criminal organizations then policy solutions need to be not only comprehensive and well coordinated, but also highly imaginative. Strategies should take full account of the nature of the challenge. On the grounds that it takes a network to defeat a network, for example, emphasis should be given not simply to extending the formalities of law enforcement cooperation (although this is important), but also to building a transnational network of coordinated measures that will eventually be global.

91. An effective concerted approach should also take into account the risk management strategies of criminal organizations and should initiate appropriate action to reduce or overcome them. In effect, responses should be the converse of the criminal organizations. In this connection, there would appear to be two priority objectives that could help to increase the risks and costs incurred by transnational criminal organizations. The first would be to eliminate safe havens or safe home bases for criminal organizations, recognizing that a safe haven is more likely to be the result of limited State capacity than to be the result of a lack of will. In any event, a multilateral approach offers distinct advantages and a higher probability of success. State capacity can be enhanced through well-targeted programmes of technical assistance. Underlying such programmes would be a long-term commitment to implement measures designed both to strengthen the State and to eradicate the conditions in which organized crime flourishes. The second priority would be to target the assets of criminal organizations, an approach that focuses less on the money-laundering process as such and more on the uncovering and forfeiture of the assets accrued by transnational criminal organizations.

VIII. ACTION REQUIRED OF THE COMMISSION

92. The Naples Political Declaration and Global Action Plan, complemented by the action already taken by the Commission at its fourth session, have set in motion a process of increased awareness of the threat posed by organized transnational crime and of the need for urgent action at the national and international levels. The Commission may wish to recommend a well-structured programme of activities, which would be phased over a determined period of time, leading gradually to the full implementation of the Naples Political Declaration and Global Action Plan. Such a programme might include comparative studies of the situation of organized transnational crime around the world and the establishment and maintenance of a central repository for information on legislation, regulatory measures, organizational structures designed to prevent and control organized transnational crime, and bilateral and multilateral cooperation arrangements. In this event, the Commission may wish to encourage States and relevant international organizations to provide information and related material to the Crime Prevention and Criminal Justice Division and to regularly update the information. As part of the above-mentioned programme, the Commission may wish to fully exercise its coordinating role, with the assistance of the Division. Finally, the Commission may wish to direct attention to ways and means of strengthening the capacity of the Secretariat to undertake operational activities and provide practical assistance to requesting States. In this regard, the Commission may also wish to urge Governments to provide the required input for the development of appropriate manuals and training guides, including model legislation and compilations of best practices in the detection, investigation and adjudication of organized transnational crime.

Notes

[1]See Christopher J. Ulrich, *The Price of Freedom: The Criminal Threat in Russia, Eastern Europe, and the Baltic Region* (London, Institute for Conflict Studies, 1995).

[2]Joel Kurtzman, *The Death of Money* (New York, Simon and Schuster, 1993).

[3] Ibid., p. 11.

[4]Susan Strange, "From Bretton Woods to the casino economy", S. Corbridge, N. Thrift and R. Martin, eds., *Money, Power and Space* (Oxford, Blackwell, 1994), pp. 49-62.

[5]See Alex P. Schmid, "Organized crime: links between upper world and underworld", unpublished paper.

[6]Michael Hirsh, "Tokyo's dirty secret: banks and the mob", *Newsweek*, 18 December 1995, pp. 36-37.

[7]Stephen Skinner, "Australia battles international organized crime", *Reuters*, 28 March 1994.

[8]B. G. Thamm, *Drogenfreigabe: Kapitulation oder Ausweg?* (Hilden, Germany, Verlag Deutsche Polizeiliteratur, 1989), p. 209.

[9]*Washington Post*, 9 March 1993.

[10]Phil Williams, "Transnational criminal organizations: strategic alliances", Brad Roberts, ed., *Order and Disorder after the Cold War* (Cambridge, Massachusetts, MIT Press, 1995), pp. 235-250.

[11]Richter H. Moore, Jr., "The activities and personnel of twenty-first century organized crime", *Criminal Organizations*, vol. 9, No. 1 (summer 1994), pp. 3-11.

[12]Benjamin R. Barber, *Jihad versus McWorld* (New York, Times Books, 1995), p. 4.

[13]Charles Hanley, "Increasingly, guerrillas financed by drugs", *Toronto Star*, 29 December 1994, p. A19.

[14]Charles Perrow, *Normal Accidents* (New York, Basic Books, 1984), p. 332.

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Fifth Session
Vienna, 21-31 May 1996
Item 3 of the Provisional agenda*

REVIEW OF PRIORITY THEMES

Implementation of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime

Report of the Secretary-General

Addendum

RECOMMENDATIONS OF THE REGIONAL MINISTERIAL WORKSHOP ON FOLLOW-UP TO THE NAPLES POLITICAL DECLARATION AND GLOBAL ACTION PLAN AGAINST ORGANIZED TRANSNATIONAL CRIME, HELD AT BUENOS AIRES FROM 27 TO 30 NOVEMBER 1995

*E/CN.15/1996/1.

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INTRODUCTION

1. The General Assembly, in its resolution 49/159 of 23 December 1994, approved the Naples Political Declaration and Global Action Plan against Organized Transnational Crime (A/49/748, annex, sect. I.A), adopted by the World Ministerial Conference on Organized Transnational Crime, held at Naples, Italy from 21 to 23 November 1994, and urged States to implement them as a matter of urgency. The Economic and Social Council, in its resolution 1995/11 of 24 July 1995, requested the Commission on Crime Prevention and Criminal Justice to ensure and monitor their full implementation, and requested the Secretary-General to submit proposals to the Commission for further action to achieve that goal.

2. Pursuant to Assembly resolution 49/159 and Council resolution 1995/11, the Regional Ministerial Workshop on Follow-up to the Naples Political Declaration and Global Action Plan against Organized Transnational Crime was convened at Buenos Aires from 27 to 30 November 1995. The Workshop was designed to follow up the World Ministerial Conference on Organized Transnational Crime, held at Naples, Italy, from 21 to 23 November 1994, and the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Cairo from 29 April to 8 May 1995. Its aim was to examine ways to strengthen and improve the capacity of the countries of Latin America and the Caribbean to respond to organized transnational crime and to improve the mechanisms of regional and multilateral cooperation to combat it.

I. RECOMMENDATIONS

3. The Regional Ministerial Workshop called for increased technical cooperation, strategic coordination, legislative action and other measures to combat organized transnational crime in all its manifestations. To promote action at both the national and the regional level to achieve those aims, the Workshop adopted by consensus the Buenos Aires Declaration on Prevention and Control of Organized Transnational Crime, which is annexed to the present report.

II. ORGANIZATION OF THE WORKSHOP

A. Opening of the Workshop

4. The Regional Ministerial Workshop was organized and hosted by the Government cooperation with the Crime Prevention and Criminal Justice Division of the Secretariat. address, the Minister of Justice of Argentina welcomed the participants and stressed the ir issues to be dealt with during the Workshop. The Director of the Division made an open behalf of the Secretary-General.

B. Attendance

5. The following States of the region of Latin America and the Caribbean were represent Barbuda, Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dor Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Saint Saint Vincent and the Grenadines, Suriname, Uruguay and Venezuela.

6. The Department for Development Support and Management Services, the United Natio Programme and the United Nations International Drug Control Programme were represent

7. The Inter-American Drug Abuse Control Commission of the Organization of America International Criminal Police Organization, an organization having a special arrangement wi and Social Council, also sent observers.

8. The Crime Prevention and Criminal Justice Division served as the secretariat of the W

C. Election of officers

9. The Workshop elected by acclamation the following officers:

Honorary President:	Carlos Rodolfo Barra (Argentina)
Vice-President:	René Blattman Bower (Bolivia)
Executive President:	Elías Jassan (Argentina)
Rapporteur:	K. D. Knight (Jamaica)

D. Adoption of the agenda

10. At its first plenary meeting on 27 November 1995, the Workshop adopted its rules of p following agenda:

1. Election of officers.

2. Adoption of the agenda and organization of work.

3. National experiences in the prevention and control of organized tran legislative and institutional measures.

4. Follow-up to the Naples Political Declaration and Global Action Plan.

5. National and international (including regional and subregional) measures in corruption.

6. Regional problems and collaborative action.

7. Need for future action, including technical cooperation requirements.

8. Conclusions and recommendations.

E. Closure of the Workshop

11. The participants expressed appreciation to the Government and people of Argentina for acting as host to the Workshop, and to the Division for contributing to its success.

Annex

BUENOS AIRES DECLARATION ON PREVENTION AND CONTROL OF ORGANIZED TRANSNATIONAL CRIME*

30 NOVEMBER 1995

We, Ministers and representatives of Ministries of Justice, Security and Interior, or with other equivalent functions of the Latin American and Caribbean countries, attending the Regional Ministerial Workshop on Organized Transnational Crime, held at Buenos Aires, Argentina, from 27 to 30 November 1995, under the auspices of the Ministry of Justice of the Republic of Argentina and the United Nations Crime Prevention and Criminal Justice Branch; having met with the aim to examine ways to strengthen and improve the capacity of our countries to respond to organized transnational crime and to improve the mechanisms of regional and multilateral cooperation to combat it; considering as well the need for an effective regional response to corruption, and taking into account the serious debilitating effects that it produces for democratic institutions and for the maintenance of the rule of law, which are necessary to fight the different manifestations of organized transnational crime;

1. Reaffirm the importance of making progress toward the implementation of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime and the resolutions adopted by the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on this matter;

2. Welcome with satisfaction the Political Declaration of the Fifth Meeting of Iberoamerican Presidents, held at Bariloche, Argentina, in October 1995;

3. Confirm our strong commitment to fight together against any criminal activity of either transnational or national nature, especially organized criminal activities, which might threaten democracy, undermine the legitimacy of governments and institutions, hamper the sustainable development of our peoples and affect their security;

4. Confirm our resolve to undertake the necessary measures, to develop programmes and to review and strengthen our legal systems, regulations and operations, as well as public administration in general and the administration of justice in particular to prevent and control organized transnational crime in its new dimensions and manifestations;

5. Acknowledge the need to adopt a coordinated hemispheric strategy to prevent and punish the laundering of criminal proceeds, including the consideration of an Interamerican convention on this subject;

6. Consider ways to establish a system for the exchange of information, including information on strategies and experiences to prevent organized transnational crime, for which we will seek the collaboration of the United Nations Crime Prevention and Criminal Justice Programme, and other relevant specialized regional and multilateral organizations;

7. Urge States that are not yet parties to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 to ratify or adhere to it without delay and implement it fully, and we recommend to States to incorporate in their legislation rules which reflect the principles contained in the Interamerican Convention on International Trafficking in Minors of 18 March 1994, which was noted in resolution 3/2 of the Commission on Crime Prevention and Criminal Justice, and as appropriate consider to become parties to the above-mentioned Convention. In the meantime, we invite Governments to take all

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necessary measures, in accordance with their respective legislation, to ensure that those engaged in the trafficking in minors are subject to prosecution and sanctions commensurate with the seriousness of this offence. We request the Commission on Crime Prevention and Criminal Justice at its fifth session, when dealing with the issue of international trafficking in minors, to consider the possibility of undertaking a survey with a view to examining the movement of minors from developing to developed countries;

8. Express the interest of our Governments in the advancement of the examination of the advantages of the elaboration of an international convention against organized transnational crime, during the fifth session of the Commission on Crime Prevention and Criminal Justice, and for this purpose we suggest that such a convention include, *inter alia*, the elements contained in Appendix I of the present Declaration;

9. Urge States to adopt, in conformity with their respective Constitutions, effective legislative measures to fight against the different forms of organized transnational crime, with respect for human rights and fundamental freedoms. In addition, we propose to give special attention to strengthening the exchange of information between the competent national authorities for the purpose of judicial proceedings, investigations and criminal statistics;

10. Invite States to undertake the necessary efforts to prevent those involved in organized crime from taking advantage of political asylum or other privileges;

11. Support the initiative of the Government of Italy on the establishment of an international training centre for law enforcement and judicial personnel and we encourage it to ensure that developing countries benefit from this initiative;

12. Request the Commission on Crime Prevention and Criminal Justice to adopt, *inter alia*, the necessary measures to counter the illicit trafficking in arms and explosives, to develop policies on the prevention of juvenile delinquency and to coordinate formulas to prevent the employment of minors in criminal activities by organized transnational crime, and to take the necessary action to counter the illicit traffic in vehicles;

13. Consider of the highest priority strategies and measures intended to promote good governance, transparency and accountability and to prevent, control and suppress corruption, so as to strengthen the capacity of States to confront organized transnational crime, and for this reason, we believe that the matter should receive adequate attention at the resumed 50th session of the General Assembly in 1996 on public administration. We consider that the prevention and control of corruption should be included in the priorities of the United Nations Crime Prevention and Criminal Justice Programme;

14. We will promote the elaboration of integrated proposals to develop regional projects for international cooperation and transfer of technology to prevent and combat organized transnational crime and corruption by the Crime Prevention and Criminal Justice Branch, in cooperation with the Governments of the Latin American and Caribbean region, and when appropriate in cooperation with the Division of Public Administration and Development Support of the United Nations Secretariat;

15. For the purpose of developing this initiative, we recommend to the Governments of the region to study the project documents contained in Appendices II and III* of the present Declaration, which were elaborated by the United Nations Crime Prevention and Criminal Justice Branch, and forward their pertinent comments to the Branch as soon as possible.

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*Appendices II and III of the Buenos Aires Declaration contain regional technical assistance project proposals on action against corruption and action against transnational organized crime, respectively. Because of the length of the documents and the current financial crisis of the United Nations, these project proposals have been omitted. Interested delegations can obtain copies of the project proposals in English and Spanish from the Secretariat.

16. Call upon donor Governments and funding and cooperation agencies, such as UNDP, the World Bank, the Inter-American Development Bank and the Caribbean Development Bank, to give their support to proposals of this nature, as well as to other technical cooperation activities planned and implemented by the Crime Prevention and Criminal Justice Branch, on the basis of requests submitted to it by individual countries or groups of countries of the Latin American and Caribbean region.

17. Urge donor Governments and funding and cooperation agencies to undertake studies and programmes aimed at addressing the socio-economic consequences of the fight against organized transnational crime and to identify alternative income-generating opportunities for those countries so affected.

Appendix I

ELEMENTS FOR INCLUSION IN AN INTERNATIONAL CONVENTION AGAINST ORGANIZED TRANSNATIONAL CRIME*

(a) Definitions as required for the purposes of the convention;

(b) The commitment to the development of both substantive and procedural national legislation against transnational criminal organizations and their activities, in convergence with the legislation of other States;

(c) Intensification of cooperation against transnational criminal activities, simplification of procedures and the implementation on a larger scale of existing agreements at the regional level;

(d) Identification, freezing and forfeiture of proceeds of crime and the development of legislative and regulatory measures, as well as administrative regulations, to make the commercial and financial sectors transparent and accountable;

(e) The provision of mutual assistance between States parties to the convention, according to the principles of the Model Treaty on Mutual Assistance in Criminal Matters (together with its Optional Protocol concerning the proceeds of crime) and the Model Treaty on the Transfer of Proceedings in Criminal Matters;

(f) Obligations concerning extradition of persons prosecuted, convicted or sentenced for crimes linked with activities of organized transnational crime, according to the principles of the Model Treaty on Extradition;

(g) The development of uniform techniques of investigation and prosecution against transnational criminal organizations, including more sophisticated means for gathering information, collecting evidence, analysing financial flows, investigating suspicious transactions, and setting up specialized national investigative units to deal specifically with organized transnational crime;

(h) The strengthening of the exchange of information in order to assist other States in the investigation and adjudication of persons engaged in transnational organized crime;

(i) The strengthening of technical assistance and the exchange of expertise, with a view to reinforcing national criminal justice systems;

(j) Mechanisms and means of monitoring and evaluating the full implementation of the convention.

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REVIEW OF PRIORITY THEMES

Control of the proceeds of crime

Report of the Secretary-General

Summary

The present report, submitted in pursuance of Economic and Social Council resolutions 1994/13 of 25 July 1994 and 1995/11 of 24 July 1995, provides an overview of the multidimensional and challenging problems associated with the proceeds of crime, and examines them from the perspective of Governments. It also summarizes international, regional and other initiatives for the prevention and control of the laundering of the proceeds of crime and the control of such proceeds, and describes the role of the United Nations in promoting international cooperation in that field.

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INTRODUCTION

1. The Economic and Social Council, in its resolution 1994/13 of 25 July 1994, requested the Secretary-General to establish and maintain close cooperation with Member States, intergovernmental organizations and other entities active in the field of controlling the proceeds of crime, including the regular exchange of information.

2. The Council also requested the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice, at its fifth session, on international, regional and other initiatives for prevention and control of the laundering of the proceeds of crime and the control of such proceeds, including recommendations for further concerted action at the global level, and on the implementation of Council resolution 1993/30 of 27 July 1993 on the control of the proceeds of crime.

3. It should be recalled that the Council, in its resolution 1995/11 of 24 July 1995, requested the Commission to ensure and monitor full implementation of the Naples Political Declaration and Global Action Plan, adopted by the World Ministerial Conference on Organized Transnational Crime, held at Naples, Italy, from 21 to 23 November 1994 (A/49/748, annex, sect. I.A). In the same resolution, the Secretary-General was requested to seek cooperation and to join efforts with other international, global and regional organizations and mechanisms that have played an active role in combating money-laundering in order to reinforce common regulatory and enforcement strategies in that area.

4. Pursuant to the above-mentioned resolutions, the Secretary-General invited Governments to provide the Secretariat with information on, *inter alia*, initiatives for prevention and control of the laundering of the proceeds of crime and the control of such proceeds.

5. The present report contains a summary of the information provided by Member States, and includes an account of international, regional and other initiatives for prevention and control of the laundering of the proceeds of crime and the control of such proceeds. The report also highlights some new trends and challenges in money-laundering activities and elaborates on recommendations for further action by the Commission.

I. SUMMARY OF THE INFORMATION RECEIVED FROM MEMBER STATES

6. By 30 March 1996, replies had been received from the following States: Argentina, Australia, Austria, Belarus, Canada, Chile, Croatia, Cuba, Cyprus, Germany, Greece, Haiti, Holy See, Italy, Jamaica, Japan,

Mexico, Panama, Qatar, Saudi Arabia, Spain, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland and United States of America.

7. Several States provided information on the adoption of broad new anti-money-laundering policies and laws (Australia, Canada, Chile, Germany, Greece, Holy See, Italy, Japan, Mexico, Panama, Spain, United Kingdom and United States). Others, such as Austria, Croatia, Cuba, Cyprus, Jamaica, Qatar, Thailand and Turkey, were in the final stages of presenting or adopting new legislation. Some States reported that they did not have any specific legislation for preventing and controlling money-laundering (Belarus and Haiti).

8. It was observed, however, that money-laundering in many countries was a criminal offence only when explicitly linked to illicit narcotics activity.

9. Some Governments stressed the importance of the 40 recommendations adopted by the Financial Action Task Force (FATF) established by the major industrialized countries (Group of Seven) and the President of the Commission of the European Communities, as a key instrument for efficiently and effectively combating money-laundering. Others identified the relevance of enacting new legislation providing for the forfeiture of proceeds from all criminal activities, emphasizing the possibility of making use of those forfeited assets to finance law enforcement efforts against criminal organizations.

10. The majority of the responding States highlighted the significance of integrated and coordinated international cooperation and the establishment of a system of exchanging information, as well as the need for the harmonization of the world's financial, regulatory and legal regimes to combat the laundering of the proceeds of serious crimes.

11. Anti-money-laundering legislation in Argentina was related to illicit drug trafficking. In 1990, Argentina established a "mixed commission" on the control of money-laundering operations linked with drug trafficking. That commission was entrusted with providing recommendations and advice to financing institutions, municipalities and courts. Control activities were also developed by the National Customs Administration, the Central Bank of the Republic, the General Tax Bureau and the Secretariat for the Prevention and Control of Drug Addiction and Illicit Drug Trafficking. Argentina had also actively participated in preparing a legislative model for uniform substantive and procedural laws in the western hemisphere. In addition, in December 1995, as a follow-up of the Summit of the Americas, held at Miami in December 1994, Argentina hosted a Ministerial Conference on Money-Laundering.

12. Over the past 10 years, Australia had developed a comprehensive set of measures representing a "whole system" approach to the problem. One of the principal features of this approach had been legislation which targeted key aspects of organized criminal activity, particularly proceeds of crime and money-laundering. The efforts of Australia against money-laundering were based on the 40 recommendations of FATF. The key pieces of legislation designed to implement those recommendations were the Proceeds of Crime Act and the Financial Transactions Report Act. The Proceeds of Crime Act had been in force for eight years, and had proved to be an effective tool for law enforcement in the fight against organized crime. The Act allowed a court to make an order for a pecuniary penalty based on the value of the benefit derived from a crime. It also provided for freezing orders to prevent the dissipation or removal of assets and confiscation orders in relation to property used in, or derived directly or indirectly from, the commission of an indictable offence against Commonwealth law. The Act provided law enforcement investigators with new tools to follow the money trail.

13. The Financial Transactions Reports Act in Australia had established a mandatory regime for reporting significant and suspect cash transactions to a monitoring agency called AUSTRAC.

14. Australia had also established a Confiscated Assets Trust Fund in December 1991. Since then, all assets recovered under the Proceeds of Crime Act and the narcotics-related provisions of the Customs Act had been

paid into the Trust Fund rather than into consolidated revenue (a total of nearly 28 million Australian dollars). The intention of the Trust Fund was also to collect all the funds gained from the instruments, profits and proceeds of crime against the environment. Funds had been made available for a wide range of projects. The Australian Federal Police had been given funding, for example, to establish satellite-based vessel and vehicle tracking systems, plus a ground-based radio-frequency tracking system.

15. Australia was a party to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,[1] had signed the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990, and was working towards ratifying the latter Convention. Australia considered that FATF had provided a strategy for the Asian countries to use in the fight against money-laundering. One aspect of that strategy had been the establishment of an Asian secretariat which had a variety of functions, including dissemination of information and coordination of assistance by way of advice and training in developing and implementing effective countermeasures against money-laundering. Australia was using its Confiscated Assets Trust Fund to fund the secretariat for the first three years of its operation.

16. Australia also believed that the Commonwealth had an important role to play in promoting international cooperation against money-laundering. Since 1993, Commonwealth Ministers of Law and Finance and their senior officials had taken significant steps towards discharging the mandate given to them by the Commonwealth Heads of Government. Excellent work had been done on preparing a model anti-money-laundering law giving effect to the 40 recommendations of FATF. Agreement had also been reached on a self-evaluation process for monitoring the implementation of anti-money-laundering measures by the Commonwealth countries.

17. In Austria, the proposed Penal Law Amendment Act of 1995 would reorganize the legal provisions in connection with illicit proceeds of organized major and moderate crime, as well as the related provisions of the judicial system of the country. In particular, the proposed amendments to the Penal Code would provide for the following: (a) consolidation of all unlawful enrichment provisions into an autonomous, non-punitive sanction that would be applicable to all offences producing illicit financial gains and to the members of criminal organizations; (b) introduction of a new type of forfeiture mechanism designed to facilitate the confiscation of assets deriving from criminal activities either committed abroad or by unknown offenders, and of assets held by criminal organizations; (c) adaptation of the provisions of the Penal Code governing the question of Austrian jurisdiction in cases with foreign implications to the proposed new system of administrative orders under the property law and to the new money-laundering provisions; and (d) adjustment to the Austrian Extradition and Legal Assistance Act to the proposed system of administrative orders under the property law for the purpose of facilitating the transnational enforcement of such orders. The amendment also covered acts of money-laundering carried out in a country where they are not (yet) punishable, provided that such acts might be subject to domestic prosecution in Austria. Another key aspect of the proposed amendment would be to make it easier for the courts to establish evidence shifting the burden of proof that dubious assets were earned in a lawful manner to the alleged perpetrator.

18. Financial profits made by a member of a criminal organization during the time of his membership or funds held by criminal organizations or obtained through punishable acts would be forfeited if it could be reasonably assumed that such funds were assets controlled by that criminal organization or derived from a punishable act. The Penal Code relating to the problem of money-laundering did not require any detailed information on how a criminal organization had obtained control over such funds. The new forfeiture regulation would stipulate that it must be ensured that the assets of a criminal organization could be forfeited without the authorities having to specify the offence from which a given pecuniary gain was derived. Forfeiture of proceeds would also be instituted regarding funds detected in Austria which belonged to a foreigner, and for which no domestic jurisdiction existed, or when they were known to be derived from a criminal act, but could not be ascribed to a specific offender. Money-laundering would also be added to the

list of punishable acts, regardless of the laws applicable at the site of the offence, as long as the preliminary acts were committed in Austria.

19. Belarus had no mechanism for controlling money-laundering and the utilization of the proceeds of crime. Because of inadequate legislation in the area of financial activity and the absence in its criminal legislation of any statutory definition of money-laundering or of the liability of either physical persons or banking institutions for such operations, Belarus was beginning to encounter the problem of dirty money becoming legalized. In order successfully to combat money-laundering, the financial as well as the criminal aspects needed to be taken into account, since the detection and withdrawal from circulation of such money was a key factor in curbing the illegal operation of organized criminal groups. Belarus had no law on extradition of criminals who had committed serious offences in the territory of the country and taken refuge abroad. It was also necessary to consider increasing cooperation between both the organs responsible for regulating the operation of the financial and economic sectors and those responsible for ensuring observance of criminal legislation.

20. In Canada, drug trafficking was considered the most important source of illicit funds, but dirty money was also generated by other criminal activities, such as fraud, counterfeiting and smuggling. Money-laundering was done through banks, investment in real estate, precious metals, commodities, insurance, securities and foreign exchange, as well as through the use of an extensive international financial network. In 1990, the Government of Canada had established an Advisory Committee on money-laundering with representation from the public and private sectors to monitor and recommend improvements to measures taken by Canada to combat money-laundering.

21. Substantive legislation in the area of proceeds of crime in Canada fell exclusively within the jurisdiction of the federal Government, and was founded in the Criminal Code, the Food and Drugs Act, the Narcotic Control Act and the Proceeds of Crime Act. The Proceeds of Crime Act defined two classes of offence, designated drug offences and enterprise crime offences which were associated with money-laundering. It made provision for search, seizure and detention of the proceeds of crime and forfeiture thereof. The criminal forfeiture scheme was conviction-based. The decision to order forfeiture was taken at the sentencing stage of the accused, and was ordered only if the court was satisfied beyond a reasonable doubt that the property consisted of proceeds of crime. It also provided for the possibility of proceeding against the target property, in the absence of the accused, and without registering a conviction, if specific preconditions were established. In those circumstances, the accused need not be in Canada, although the standard of proof remained that of proof beyond a reasonable doubt.

22. Proceeds of crime were defined as any property, benefit of advantage, within or outside Canada, obtained or derived directly or indirectly as a result of: (a) the commission in Canada of an enterprise crime offence or a designated drug offence; or (b) an act or omission anywhere that, if it had occurred in Canada, would have constituted an enterprise crime offence or a designated drug offence. Money-laundering offences could be prosecuted on indictment with a maximum sentence of 10 years of imprisonment, or by summary conviction, with a maximum sentence of six months of imprisonment or a fine of $2,000 Canadian dollars (Can$), or both.

23. The Proceeds of Crime Act established record-keeping requirements in the financial services industry in order to facilitate the investigation and prosecution of offences, and it provided that it was an offence to contravene or to fail to comply with that requirement. The Act required financial institutions to keep records of large cash transactions when transactions totalling Can$ 10,000 or more were made by or for the same person in the same day. Verification of the identity of individuals who transacted business with the institution, whether they were acting on their own behalf or as representatives of some other entity were also required. Banks and other financial institutions in Canada were obliged in general to maintain the confidentiality of information obtained in the course of dealing with customers; but, under the Proceeds of

Crime Act, they could report suspicions of money-laundering without the fear of civil or criminal liability for such reporting.

24. Canada had amended in 1993 the Criminal Code and provided a scheme for the protection and interception of private oral communications and telecommunications pursuant to a judicial authorization. For investigative purposes, the courts could authorize electronic video surveillance, interception of cellular phone communications and the use of dialled-number recorders and electronic tracking devices.

25. The Seized Property Management Act came into force in Canada in September 1994. It provided a structure within the Government of Canada by which it could cooperate with local and international law enforcement agencies to locate, seize, manage and dispose of forfeited property generated by criminal activities. Its provisions permitted forfeited assets to be shared with Canadian law enforcement agencies and with foreign governments whose law enforcement agencies had participated in investigations leading to their forfeiture.

26. The Canadian Bankers' Association had established and maintained, since 1986, a Task Force on Money-Laundering as a consultant body for banks. Canadian banks had published guidelines to assist employees in implementing appropriate measures to detect and combat money-laundering.

27. In Chile, the law that sanctioned illicit drug trafficking established a series of measures to prevent laundering of assets derived from drug trafficking. Bank secrecy no longer constituted an obstacle for investigations in Chile. The body regulating bank secrecy did not hinder investigations carried out by the police and magistrates to combat money-laundering, while a special judicial authorization was required to expedite investigations.

28. On 19 March 1994, the Government of Chile adopted a law that strengthened legal controls over the stock market, the financial system, pension funds and insurance companies . By another law adopted on 20 September 1995, Chile had modified its Penal Code in order to create new criminal offences with stricter sanctions.

29. Croatia adhered to all international treaties, and was engaged in concluding new agreements with the police of other countries, particularly those on jointly combating all types of international crime, such as organized crime and drug trafficking, as well as international industrial and financial crime. In addition, Croatia was taking an active part in international meetings, conferences, and working groups, thus contributing to combating all types of international crime. The Ministry of Internal Affairs was involved in drafting new criminal legislation, including the Money Laundering Act, the Penal Code, the Organized Crime Act and the Drug Trafficking Act, which would be brought into line with the United Nations recommendations.

30. Cuba had adopted legislation permitting freer access to foreign capital and expanding facilities for investment. Combined with the increase in tourism, those measures gave rise to concern regarding the possibility of operations involving the laundering of money derived from illicit activities. Although the Penal Code of Cuba did not provide for an offence relating exclusively to activities involving money-laundering, there was an offence in the Penal Code whose definition was totally applicable to it, namely the offence of being an accessory to a crime after the fact. Complicity was rendered punishable by the extension of the concept of participation in the principal offence to anyone who gave advice with a view to the more effective performance of the punishable act or promises, before the commission of the offence, to conceal the perpetrator of the offence or the objects obtained, or to remove the traces left. There were other provisions complementing those referred to above. It was made obligatory to report any criminal act of which one was aware, and, in the event that this was not done, provision was made for the offence of failing to report an offence. Other offences proscribed in this legislation were association for a criminal purpose and illicit enrichment. There was also the possibility, when any such criminal offence was committed, to order the

confiscation of assets derived from the offence. A series of rules of an administrative nature t in the banking area were being developed, and efforts were made to train the personnel ass duties in the most efficient way.

31. Cyprus intended to submit a bill to be known as the "Law that Provides for the Investigation and Confiscation of Proceeds Resulting From Certain Criminal Actions" to Representatives in 1996. Cyprus had ratified the 1988 Convention in March 1990. In June 19 was enacted to give effect to the provisions of that Convention. In 1995, Cyprus had also ratifi of Europe Convention.

32. Since 1988, the Central Bank of Cyprus had issued various circulars and recommen financial sector, designed to combat money-laundering through the financial system. Since Se all banks in Cyprus, both domestic and offshore, were required to submit to the Central Bar monthly statement of their cash deposits and unusual fund transfers in excess of the equiva States dollars 10,000 (US$) per transaction. Following the request of the Central Bank, adjusted their computerized accounting systems so that all cash deposits in excess of that limit separately at the time of the transaction. The instant detection of cash transactions had particu the ability of banks to monitor and identify all transactions of a suspicious nature which migl the laundering of illicit funds. Since December 1994, banks, acting on the request of the Cer appointed a member of the managerial staff as Money Laundering Compliance Officers. The was in close contact with the Association of Commercial Banks for the purpose of provi towards the preparation of a code of conduct designed to prevent the use of the banking purpose of money-laundering. In addition, the Central Bank was making constant effo awareness on money-laundering through: (a) circulation to banks of extensive lists showin suspicious transactions accompanied by warning signs and characteristic behaviour pattern involved in money-laundering; and (b) organizing training seminars on its own initiative and pr to promote their own in-house training system for timely recognition and prevention of trans at the laundering of criminally derived funds.

33. In Germany, new criminal provisions enacted against money-laundering criminalized proceeds of all major crimes and minor crimes committed by a member of a criminal orgar provisions were in line with the aims of article 6 of the Council of Europe Convention. The provisions against money-laundering were based on the assumption that money-laundering co as the systematic disguising of illegal assets, using the scope offered by the legal financial view to shielding them from seizure by the criminal prosecution authorities and preserving value. In line with the 1988 Convention, the provisions distinguished between the elements offence of "disguising the origin" and that of the acquisition, possession or use of items derivi predicate offences. The new legislation criminalized actions which prevented or obstructed th criminal prosecution authorities to assets derived from certain criminal offences. It also c criminal offence the prevention or placing in jeopardy of the location, forfeiture, confiscatio incriminating property or of the detection of its origin. In contrast to the acquisition and po of items derived from a criminal offence, there were limits to punishability, while illegality dependent on the offenders' having known of the illicit origin of the item at the time Knowledge obtained subsequently, therefore, did not incriminate the offender. Attempted mo was also a punishable offence. According to the legislation, money might be confiscated, going beyond confiscation might be ordered (seizure of assets or extended forfeiture) w depriving the offender of unlawfully acquired property.

34. Germany had recently considered an extension of the elements of the criminal offe laundering by amending the catalogue of predicate offences with a view to ensuring a prosecution of offenders. The German Criminal Code foresaw punishability of money-laun where the predicate offence has been committed abroad. The Courts might at their discreti

punishment or dispense with punishment if the offender voluntarily disclosed his knowledge, and had substantially helped to make possible detection of the offence or offences predicate to money-laundering, going beyond his own contribution thereto. Those privileges were intended to contribute to more effective suppression of organized crime in so far as they created an incentive to report punishable money-laundering offences. Tendencies to shift money-laundering activities to financial exchange offices and, *inter alia*, to the trade in high-quality luxury goods and in precious metals had been observed. Such activities aimed at laundering the proceeds of crime were punishable under the German penal law.

35. Greece indicated that the Greek Parliament had recently adopted a law containing provisions on the prevention and repression of legalization of proceeds from criminal actions and other penal provisions.

36. In Haiti there were no penal provisions or regulations for the control of the laundering of the proceeds of crime. Haiti recognized that there was a tremendous development of drug trafficking and related crimes all over the world, and that this issue should be addressed.

37. The Holy See stated that an agreement had been reached between the *Istituto per le Opere di Religione* (Bank of the Vatican) and the Ministry of Finance of Italy concerning measures against possible money-laundering transactions.

38. Italy had adopted specific legislation to combat both organized crime and money-laundering at the national and international level. It had criminalized money-laundering in the form of both substitution of moneys and reinvestment in legitimate economic activities. Pre-emptive measures had been adopted for determining the real status of corporate ownership and enterprise owners, as well as for collecting information on the purchase and transfer of corporate entities. Italian legislation obliged notaries and town clerks to inform the *Questore* (local high police authority) of movements of company funds and shares, as well as of the transfers of commercial licences. The law also contained provisions designed to ensure the transparency of public administration.

39. Illicitly acquired goods could be forfeited in Italy, in relation to a conviction and pre-emptively in the case of people belonging to or cooperating with Mafia-type organizations. Such a forfeiture was carried out through a judicial process with full respect of the rights of the defence and of third parties acting in good faith. The body regulating bank secrecy in Italy did not hinder efforts by police and magistrates to combat money-laundering. The legislation regulating the use of cash exceeding 20 million liras ensured the identification of bank and financial brokers, and imposed upon them the obligation to inform the *Questore* of all suspicious transactions, without incurring penal and administrative sanctions because their collaboration exonerated them from criminal liability. The Italian legislation contained specific provisions envisaging the possibility of electronic surveillance, undercover operations and controlled deliveries. Furthermore, Italy had established investigative bodies which were specialized in intelligence on organized crime, as well as in economic matters and money-laundering. Ad hoc laws also ensured the protection of cooperating witnesses and restitution to the victims of organized crime.

40. The Italian Parliament was studying "Community Law 1994", which envisaged the possibility of extending money-laundering laws to other strictly financial activities and occupations in order to combat illicit transactions.

41. At the international level, Italy was cooperating with FATF, the Council of Europe and the European Union, and fully implementing their recommendations and directives. Italy had also signed a number of bilateral agreements with other countries, including the United Kingdom and the United States. Those agreements envisaged the seizure and forfeiture of goods on the basis of special crime prevention laws.

42. Jamaica had ratified the 1988 Convention, and had decided to adopt the Model Regulations on Money Laundering of the Organization of American States (OAS), the 21 recommendations of the Caribbean

Financial Action Task Force (CFATF), and the 40 FATF recommendations. The Parliament of Jamaica was currently considering a bill designed to make money-laundering a criminal offence, and approval was expected shortly. Jamaica had created an Assets Tracing and Money Laundering Unit within the Jamaica Constabulary Force. At the same time, the Fraud Squad of the Jamaica Constabulary Force was being reorganized to deal with financial fraud and white collar crimes, and had been working with CFATF. An evaluation of the country programme is to take place in October 1996.

43. Japan expressed the view that the control of illicit proceeds should be carried out jointly with the suppression of crimes which produced such proceeds, the confiscation or forfeiture of illicit proceeds and the prevention of concealment of funds and money-laundering, and should provide assurances of the transparency of monetary transactions. At the same time, those measures should be carried out in the most effective manner, taking into account the trends and circumstances of crime in each country. Moreover, the measures must be consistent with the basic legal systems of each country, and reflect the interests of victims. The Japanese Penal Code provided for confiscation and "collection of equivalent value" (forfeiture) applicable to all crimes except very minor ones. The Anti-Drug Special Law which went into effect in 1992 controlled illicit proceeds obtained as a result of drug offences. The Ministry of Finance and other relevant administrative organs controlled and supervised all financial institutions. They were required to identify customers carefully, pay special attention to specified transactions, and keep specified documents on file. In addition, a system to control transactional movement of certain kinds of capital was currently in operation. Reporting of transactions suspected to be related to drugs was mandatory. Japan did not have a bank secrecy law, and financial institutions cooperated with investigating authorities, which, by virtue of a warrant issued by a judge, might search and seize evidence of transactions and other documents kept by those institutions. Despite the considerable efforts which had been made to ensure the transparency of financial institutions, as large amounts of cash were often used for payments in business transactions, criminal organizations could easily use their illicit proceeds in that form. Such a business practice was a factor to be considered in the attempt to decrease the amount of capital being laundered.

44. Japan was of the view that international cooperation was essential to effectively suppress offences. In addition, the Government of Japan always endeavoured to promote bilateral cooperation with other countries.

45. With regard to the practical aspects of the United Nations crime prevention and criminal justice programme, Japan considered that facilitating the exchange of information among Member States would be very useful in controlling the proceeds of crime. Information exchange should thus be given priority in the future work of the programme. In that regard, the Commission, at its fifth session, should fully discuss concrete methods, such as the framework and topics for the collection and exchange of information, rather than merely ask Member States to provide unspecified information.

46. Mexico had taken various measures and implemented a number of actions to prevent, detect and combat money-laundering, taking into account that one of its main origins was drug trafficking, the vast proceeds of which were being channelled into national financial and commercial systems, a process that was being fostered by the increasing technological sophistication of the international finance system. Organized crime took advantage of and exploited the lack of international coordination and the unsophisticated methods used to combat it. Mexico was aware that the increase in money-laundering was also due to weaknesses of regulatory mechanisms in finance, banking and taxation. Since 1990, Mexico had responded at the national level by incorporating into its legislation provisions designed to penalize money-laundering, and imposing a penalty on any person bringing a sum equivalent to US$ 20,000 into the country without declaring it. The coordination agreement between the Department of Public Prosecution and the Department of Finance and Public Credit concerning crimes against public health and safety made it possible to detect operations presumed to involve money-laundering by means of tax inspections, whereby sufficient information could be obtained to bring charges. In October 1993, non-mandatory recommendations were introduced in the banking sector, with the aim of obtaining particulars of and identifying suspect operations.

47. On 30 November 1995, the President submitted to Congress, through the Senate, a penal law reform bill establishing money-laundering as an autonomous offence, that is, as an unlawful act which would no longer be linked exclusively to revenue offences. Similarly, the laws governing banking, the stock market and financial activities and the fiscal laws had been adapted.

48. The two strategies followed by Mexico in this field were as follows: (a) establishing channels for communication of intelligence and information that would make it possible to expand the knowledge base in each country and to enhance the process of communication with countries that possessed more advanced techniques; and (b) international cooperation in combating criminal activities that frustrated the efforts of Governments to fulfil their commitment to promote human rights, fundamental freedoms and democratic decision-making.

49. At the international level, mutual legal assistance and customs cooperation treaties agreed with other countries had been put into effect. In May 1995, a mutual assistance agreement had been signed with the United States for the exchange of information on currency transactions conducted through financial institutions, and another would shortly be signed with France. There was already a bilateral agreement with the United States on the sharing of property confiscated from drug traffickers in that country. The proceeds would be used by Mexico to purchase equipment and finance programmes for combating drug trafficking and addiction.

50. In Mexico, the application of the juridical concept of confiscation of property was prohibited under the Constitution. Nevertheless, the Penal Code, which applied to the Federal District in matters of ordinary jurisdiction and to the entire country in matters of federal jurisdiction, provided for the juridical concept of seizure of the instrumentalities, objects and proceeds of crime, for which purpose the Federal Code of Criminal Procedure empowered the Federal Department of Public Prosecution to take into custody any instrumentalities of, or property derived from, or constituting the proceeds or bearing signs of, or having a possible connection with, an offence, with a view to subsequently requesting the competent judicial authority to rule on the forfeiture of such property.

51. Panama had recently adopted legislation making money-laundering a criminal offence. It reiterated its view, expressed at the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Cairo from 29 April to 8 May 1995, that, like other developing countries, Panama required greater technical assistance from the United Nations crime prevention and criminal justice programme.

52. Qatar reported that its competent authorities were taking appropriate measures for the implementation of recommendations of the United Nations in the field of crime control on a regular basis, through international agreements, coordination and cooperation, as well as the exchange of information on organized crime. The authorities were also studying legislation prohibiting the laundering of the proceeds of crime. The Ministry of the Interior had coordinated with the Central Bank of Qatar measures to be taken to combat the laundering of such proceeds. As a result, the Central Bank, in 1994, has issued to banks and exchange offices operating in the State two circulars which included measures for combating money-laundering.

53. In recent years Spain had brought its legislation in this area not only into line with the criteria set out by the 1988 Convention, but also with the 40 recommendations of FATF. A specific law governing measures to prevent money-laundering and the corresponding regulations had been promulgated by Royal Decree and published in the Official Gazette in July 1995. The New Penal Code of Spain, which would come into effect in May 1996, defined the offence of general laundering in connection with a serious crime, under the provisions related to receiving stolen goods and similar conduct. Some innovations included the broadening of the scope for punishment and a more precise definition of punishable conduct, including any serious criminal activity (prostitution, fraud, terrorism, tax offences etc.), and an increase in the penalties imposed by the current Code in relation to laundering offences connected with drug trafficking. While it might seem that the severity of the foreseen penalties had not changed (imprisonment for a term of one to six years) the

new Code did not envisage automatic reductions, which meant that the *de facto* penalties were more stringent. Pending the enactment of the New Penal Code in mid-1996, only the laundering of proceeds from drug trafficking could be prosecuted in Spain.

54. The term "laundering" did not exist in Spanish legislation. The current Penal Code referred to receiving stolen goods. The same terminology was employed in the new Code, which dealt with "receiving stolen goods and other similar conduct". It was recognized that such terminology might give rise to misunderstandings, because it might be unclear in other languages.

55. Spanish legislation included punishment for certain types of conduct, such as negligence, incitement and possession, despite the fact that the 1988 Convention and the European Community Directive on Money Laundering of 1991 did not insist on compulsory punishment for such conduct, but made it optional for States. Spanish legislation laid down very useful additional measures for cases in which the offences were committed by organized gangs, as well as increasing the penalty imposed, such as the dissolution of the organization, closure of its premises, temporary suspension of its activities and professional disqualification of its members.

56. Thailand attached importance to the prevention and control of the laundering of the proceeds of crime as well as the suppression of narcotics offences. It had enacted two laws that dealt with those crimes: the Act on Measures for the Suppression of Offenders in an Offence Relating to Narcotics, which gave the authorities the power to trace, seize and confiscate the properties of the offender; and the Act on Mutual Assistance in Criminal Matters, which promoted international cooperation between the law enforcement agencies of Thailand and those of foreign countries in gathering information and initiating legal proceedings against criminal offenders.

57. A proposed act on the prevention and suppression of concealment or alteration of property connected with the commission of an offence had been submitted to Parliament for consideration and approval. The proposed act would create a specific office to administer data regarding concealment or alteration of property connected with the commission of an offence. The office would receive and analyse reports from financial institutions and government agencies and officials that had the responsibility to give a statement regarding transactions involving a higher value than the one stipulated in the Ministerial Regulations, or giving reasonable cause for suspicion that they were related to the commission of an offence.

58. The new act would foresee imprisonment of from 1 to 10 years or a fine not exceeding 200,000 baht, or both, for any person who transferred or accepted a transfer of any property connected with the commission of an offence for concealment or cover-up of the acquisition and source of, or the transfer of any rights regarding, the said property. By virtue of the new act, any person who conspired with one or more other persons to commit an offence should be punished with imprisonment not exceeding five years or a fine not exceeding 60,000 baht, or both. In such cases, if the offender was a government official, the penalty imposed for such offence would be trebled. The proposed act also provided that property, including the interest thereon, connected with the commission of an offence would become State property following a court conviction.

59. A Bill relating to money-laundering was being finalized in the General Assembly of Turkey. Nevertheless, the international security agreements signed by the Government of Turkey included provisions for the exchange of information on the prevention and control of money-laundering. Turkey supported all international initiatives in this field, had signed the 1988 Convention, and was a full member of FATF, having endorsed its 40 recommendations in 1991, and having since then initiated studies for creating new legislation and modifications in the existing law and regulations which were necessary for the implementation of the recommendations, as well as for the ratification of the 1988 Convention. In June 1991, amendments in the exchange control regulations had been introduced in order to remove the provisions concerning the importation into the country of foreign currencies without restriction or without investigation of their source.

Those amendments also introduced a requirement for banks and special financial institutions to report to the competent authorities all transfers abroad of Turkish lira and foreign currency exceeding US$ 50,000 or its equivalent, except in the case of exports, imports and invisible transactions.

60. Turkey intended to expedite the preparatory work initiated in 1992 for establishing money-laundering as an offence punishable by law. Consequently, a draft law had been prepared on the basis of contributions by all relevant ministries and public entities, known as the Law on Prevention of Illicit Trafficking in Narcotic Drugs and Psychotropic Substances and Money Laundering, which would also ratify the 1988 Convention. The major characteristics of the draft law might be summarized as follows: (a) money-laundering would be established as an offence with a broader definition, covering the proceeds of crime as money and monetary instruments, property and proceeds derived from any criminal activity; (b) a confiscation provision with a broader coverage than existing provisions had been included; (c) freezing and seizing of assets had been covered in specific provisions; and (d) controlled delivery had been introduced for the first time. The draft law would regulate corporate criminal liability and contained specific provisions on suspicious transactions. It would also establish the Search and Examination of Financial Crimes Directorate (SEFCD), which would be a special body directly attached to the Office of the Prime Minister, with responsibilities for combating money-laundering. SEFCD would employ both law enforcement staff and financial experts. Moreover, it would have a close working relationship with the General Directorate of Security, the customs authorities, the Ministry of Justice, the Undersecretariat of the Treasury and other competent bodies. SEFCD would be created as a body authorized to receive all kinds of information and documents from financial and non-financial institutions, including public entities, as well as from individuals. It would also have the authority to establish a general system for reporting transactions.

61. The United Kingdom placed the greatest importance on action to suppress money-laundering and to confiscate the proceeds of crime. It had undertaken a very wide range of initiatives in recent years to strengthen its own anti-money-laundering and confiscation systems. It also remained in the forefront of international efforts in the field, and was keen to promote international cooperation in combating money-laundering and confiscating the proceeds thereof, wherever possible.

62. Many measures had been taken in recent years to prevent criminals from using the financial system of the United Kingdom for money-laundering. Those measures included: the criminalization of money-laundering predicated on all serious crimes; the publication in 1990/91 of the Money Laundering Guidance Notes for banks and building societies and insurance and investment businesses, and the issuing in February 1995 of their most recent revision; the establishment of the National Criminal Intelligence Service as a central point for receiving and disseminating disclosures from financial institutions and other sources about suspected money-laundering; and the establishment of an anti-money-laundering regulatory regime for credit and financial institutions as part of the measures taken to implement the European Community Directive on Money Laundering. In addition, the United Kingdom had comprehensive legislation in place to trace, freeze and confiscate the proceeds of drug trafficking and all other serious crime. That legislation had been strengthened recently by the Proceeds of Crime Act of 1995.

63. The United Kingdom had been highly active from the outset in FATF. It continued to take a keen interest in money-laundering and confiscation policy issues in forums such as the Council of Europe. It had comprehensive legislation in place to assist other jurisdictions in tracing, freezing and confiscating the proceeds of all serious crimes (the latter two on a basis of reciprocity). The practical steps it had taken to encourage practical cooperation in confiscation included the following: implementation and ratification in 1991 of the 1988 Convention; ratification in 1992 (as the first country to do so) of the 1990 Council of Europe Convention; conclusion since February 1988 of 29 bilateral confiscation agreements, while pursuing agreements with a number of other countries.

64. The first money-laundering provisions in United Kingdom law were included in the Drug Trafficking Offences Act which came into force in September 1986. The provisions were consolidated in the Drug

Trafficking Act 1994, which makes it an offence for any person to assist another in disguising the true identity of drug-trafficking proceeds. The 1994 Act created a related offence of prejudicing an investigation, designed to catch the employees of financial institutions and others who "tipped off" a suspect that an investigation was being carried out.

65. The main purpose of the money-laundering provisions of the Criminal Justice Act 1993 was to enable the United Kingdom to implement the European Community Money Laundering Directive. Under the terms of the Directive, implementation was mandatory as far as the proceeds of drug trafficking were concerned, though member States might extend implementation to include the proceeds of other serious crime if they wished. Since both the Drug Trafficking Offences Act 1986 and the Criminal Justice (International Cooperation) Act 1990 had already been in force before the United Kingdom had set about implementing the European Community Directive, existing legislation had to be examined to determine where it might be supplemented, as in the case of the 1988 Convention.

66. The 1993 Act created a wide range of new offences to criminalize the laundering of the proceeds of serious crimes other than drug trafficking. The new offence of failure to disclose to the authorities a suspicion that another was engaged in money-laundering had been restricted to the proceeds of drug trafficking and terrorist funds. There was consequently no offence of failure to disclose a suspicion that another is engaged in laundering the proceeds of crime generally.

67. A confiscation order under the 1994 Act might only be made against a person who had been convicted of a drug-trafficking offence as defined by the Act. The 1994 Act contained a number of features new to the law of the United Kingdom. One of these was the power that it created to confiscate the totality of a person's benefit from drug trafficking, including drug trafficking of which the defendant had never been convicted. It also contained the power to make a charging order on assets which might be used to satisfy a confiscation order. The power to impose a charge on assets such as stocks and units of a unit trust was modelled on existing powers in the civil law to enforce civil judgements. In setting the amount to be recovered under the order, the court could take into account any gifts the offender had made to family, associates and others in the last six years, and any gifts the defendant had made at any time out of proceeds of drug trafficking. When it came to enforcing the confiscation order, then the value of such gifts could be confiscated from their recipients. The new investigative powers particular to drug-trafficking investigations were the production order and the search warrant. Both devices, which had been consolidated in the Drug Trafficking Act 1994, enabled the police and customs to obtain confidential banking and other material at a very early stage of an investigation, before there were reasonable grounds to believe that a specific offence had been committed, and they were particularly useful in financial investigations into the proceeds of drug trafficking.

68. The 1994 Act also creates new powers for the High Court to make a confiscation order against a person who died after conviction but before a confiscation order had been made, and to make a confiscation order *in absentia* against a person who absconded either before or after conviction.

69. The United States was firmly committed to international coordination and cooperation to combat transnational crime, by denying criminals the benefit of the proceeds of their criminal activity, and by criminalizing efforts to hide or launder the proceeds of all serious crime.

70. The United States believed that legislation providing for the forfeiture of proceeds derived from criminal activity should be combined with a range of prosecutorial measures in the fight against international crime, particularly organized transnational crime. Seizing and forfeiting the illegally obtained assets of a criminal organization and then channelling those forfeited assets into law enforcement efforts to dismantle the criminal organization provided an important counterpart to prosecution of individual offenders.

71. The United States considered that gaps in legislation concerning criminal organizations inhibited effective prosecution of criminals, and limited the success of domestic as well as international law enforcement efforts. As stated in the report of the International Conference on Preventing and Controlling Money-Laundering and Use of the Proceeds of Crime: A Global Approach, held at Courmayeur, Italy, from 18 to 20 June 1994 (E/CONF.88/7), it was vital for States to have a wide range of laws and techniques to investigate and prosecute crime of all kinds, including money-laundering and conspiracy to launder illegally obtained funds.

72. The United States strongly supported the efforts of the United Nations and other global and regional initiatives designed to promote the harmonization of the world's financial, regulatory and legal regimes, thereby achieving more effective control of the laundering of the proceeds of serious crime. It also encouraged States to adopt and implement such measures, and supported the establishment of institutions to further assist the international community in thwarting the increasingly complex efforts to circumvent anti-money-laundering laws.

II. RECENT INTERNATIONAL INITIATIVES

73. The adoption of the 1988 Convention not only marked the first decisive step in mobilizing the international community in the fight against illicit drug trafficking, but also defined money-laundering offences and required parties to the Convention to proscribe them as serious criminal offences that would be severely punished and subject to extradition. The Convention called for the establishment of identification and tracking machinery, as well as procedures for making banking, financial or commercial records available, while forbidding States to decline to act on the grounds of bank secrecy.

74. FATF was established to examine measures to combat money-laundering. As of November 1995, the membership of FATF included 26 States or territories, the European Union and the Cooperation Council for the Arab States of the Gulf, representing the major financial centres of the world. The 40 recommendations of FATF strengthened and supplemented the provisions of the 1988 Convention and the principles adopted by the Basle Committee on Banking Regulations and Supervisory Practices in 1988, particularly concerning future cooperation between the financial system and law enforcement and in the area of international cooperation.

75. In 1995, FATF completed the first set of mutual evaluations of its members regarding progress in the implementation of the 40 recommendations. In 1996, the second round of such evaluations was beginning, focusing on the effectiveness of each member's anti-money-laundering measures in practice.

76. Besides encouraging States to become parties to the 1988 Convention, to enact financial legislation that did not run counter to the guidelines of FATF, and to increase multilateral cooperation in investigations and prosecutions, the recommendations focused on the improvement of national legal systems to combat money-laundering, the enhancement of the role of the financial system, understood in its broadest sense, and the strengthening of international cooperation. In addition to CFATF, established in 1993, FATF established a Secretariat in Australia at the end of 1994, to facilitate activities in Asia and the Pacific. FATF also continued to analyse world financial flows, banking and financial systems and money-laundering methods, trying to identify the weak links that facilitated money-laundering operations.

77. In the context of the coordination mechanism of FATF, which brought together all international organizations active in the field of prevention and control of the laundering of the proceeds of crime, considerable progress had been achieved in identifying areas where cooperation among relevant international organizations would be most effective. In that connection, it had become evident that one area where international action was necessary was the collection of reliable information on national action for the prevention and control of the laundering and use of the proceeds of crime. The collection and regular

updating of information on national legislation, on regulatory measures and on the experience gained from implementation of such measures was essential, not only to improve knowledge and decision-making, but also as a foundation for increased and more effective international cooperation. A standard format for collection and processing of information had been developed by the International Criminal Police Organization (ICPO/ Interpol), with input from the Commonwealth and other international organizations.

78. At the Summit of the Americas held at Miami in 1995, the Heads of State and Government of the countries of the region recognized that money-laundering constituted a serious challenge to the maintenance of law and order throughout the hemisphere, and might threaten the integrity, reliability and stability of Governments, financial systems and commerce. A Hemispheric Plan and a Declaration of Principles were adopted at the Summit of the Americas Ministerial Conference on Money Laundering held at Buenos Aires from 30 November to 2 December 1995. Standards and principles to promote transparency, oversight and enforcement to stop money-laundering were included in the communiqué, which also proclaimed a Declaration of Principles in which the participants agreed to make the laundering of proceeds a criminal offence. It further outlined legal, regulatory and enforcement actions to be taken against criminal enterprises.

79. The Conference succeeded in creating awareness that money-laundering was a problem going beyond drug trafficking and involving other kinds of transnational crime, and that money-laundering was not only a law enforcement issue, but also a financial and economic issue, requiring a coordinated inter-agency approach. In addition, States agreed on the establishment of a working group of OAS, to consider an inter-American convention to combat money-laundering. Implementation of the communiqué will be made through the Inter-American Drug Abuse Control Commission of OAS.

80. In 1994 and 1995, the following conferences held under the auspices of the United Nations all dealt with the necessity to introduce effective measures against money-laundering: the International Conference on Preventing and Controlling Money-Laundering and the Use of the Proceeds of Crime: A Global Approach; the World Ministerial Conference on Organized Transnational Crime; the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders; and the Regional Ministerial Workshop on Follow-up to the Naples Political Declaration and Global Action Plan against Organized transnational Crime, held at Buenos Aires from 27 to 30 November 1995.

81. The two entities of the Secretariat directly concerned with combating money-laundering, namely the Crime Prevention and Criminal Justice Division and the United Nations International Drug Control Programme (UNDCP), had been given specific mandates to that effect. The two entities have been closely cooperating in the implementation of their respective mandates. In order to improve the services that the two entities were mandated to provide to Member States, the Division and UNDCP had been working towards developing a comprehensive technical assistance project against the laundering of the proceeds of crime.

III. NEW TRENDS AND CHALLENGES IN COMBATING MONEY-LAUNDERING ACTIVITIES

82. Globalization is the major socio-economic phenomenon confronting the world in the last decade of the twentieth century. Driven by technological and organizational innovations, the world socio-economic space is currently experiencing profound structural changes. Deregulation processes, new technologies, advancements in telecommunications and the creation of expanded economic spaces and market liberalization have had major implications on the development process, and have induced sizable productivity increases and new opportunities for profits, not only for the legal economy, but also, for organized transnational crime, which coexisted with, and benefited by, the legal economy.

83. The implementation of free trade agreements and regional compacts creating trading and economic zones which transcend national borders could increase the use of international trade as a mechanism for laundering

the proceeds of criminal organizations. The impact of the liberalization of border and other customs controls, liberalized banking procedures and freedom of access within those zones creates additional potential risks for the future. The trends cannot be changed, but in relation to them, it is important to bear in mind the harmful consequences that they could have over small dependent economies, especially those of developing countries and of countries in transition.

84. Transnational criminal organizations, with their highly corruptive power, have become deeply involved in privatization programmes. They have started to buy previously State-owned banks and financial, telecommunications and service institutions, and suddenly they could start to control - if effective countermeasures are not quickly implemented - not only assets, but countries as well.

85. As of 1 November 1995, 119 States had become parties to the 1988 Convention, and the number continued to grow in 1996. Many important financial centres have adopted legislation to curb drug-related money-laundering. Too many priority financial centres, however, still have not adopted needed legislation or ratified the Convention. There is also a big question whether the drug-trafficking-oriented money-laundering laws that many Governments adopted in the early 1990s were adequate, given recent developments in money-laundering practices, the new technologies used in banking and, most importantly, the diversity and flexibility of organized transnational crime and its ability to shift operations to other more lucrative areas.

86. Organized crime groups are increasingly a factor in predominantly money-laundering schemes, and the multiple sources of their proceeds compounds the difficulty of linking the monetary transaction to a unique predicate offence like drug trafficking. Meanwhile, an increasing number of organized criminal organizations, do not directly manage the laundering or conversion of their proceeds, but rely predominantly on professional money brokers. Such brokers are increasingly crafting effective schemes to evade normal monitoring, detection and reporting devices.

87. To understand money-laundering as it is currently practised on a global basis, it is necessary to appreciate money as a commodity. Just as a sound investment portfolio will contain stocks, bonds and other monetary instruments, the money brokers vary their holdings. The money-laundering industry, like the underlying criminal acts giving rise to it, crosses national boundaries, and this globalization will intensify as technology makes currency transfers faster and easier. Few governments have control mechanisms adequate for identifying and tracing such transactions should they occur. Apart from financial institutions in which officials are complicit in the money-laundering transaction, financial institutions are rendered most vulnerable by the combination of correspondent banking relations and electronic transfers.

88. The layering and integration stages of money-laundering are using more sophisticated techniques. Cash is now being held in bulk, or placed into the financial system through exchange houses and other non-bank financial institutions. It is moved not only through wire transfers, but also through innumerable varieties of licit and illicit financial instruments, including letters of credit, bonds and other securities, prime bank notes and guarantees, without a parallel increase in the capability of the far-flung elements of the world's financial system to verify the beneficiaries or authenticity of instruments.

89. There is emerging concern about new banking practices, such as direct access banking which permits customers to process transactions directly through their accounts by computer operating on software provided by the bank. This system limits the ability of the bank to monitor account activity, such as transactions involving joint accounts and pass-through banking schemes which have been a traditional method of layering. Beneficial owners of funds can now manipulate the identity of the ultimate recipient of the funds without a review by bank officers. Pass-through banking by itself poses myriad problems for regulators, by creating the ability of depositors unilaterally to create accounts within accounts, or even to provide quasi-banking services to off-line customers in a kind of bank within a bank. These new bank services can limit the utility

of systems in place which allow information about both the originator and the recipient to travel with the electronic funds transfer.

90. Non-bank financial systems are still unevenly regulated in most parts of the world, especially at the placement stage for cash. Non-bank financial institutions include a wide variety of exchange houses, cheque-cashing services, insurers, mortgagers, brokers, importers, exporters, trading companies, gold and precious metal dealers, casinos, express delivery services and other money movers of varying degrees of sophistication and capability, and other underground banking systems.

91. Control efforts are being sorely challenged by the creation of new, independent wire transfer services, some of which service small clusters of banks. Reports and economic indicators generally do not reflect the volume of money that is transferred in the financial system, because transactions of that kind are designed to fall outside the scope of administrative controls and other reporting.

92. The electronic highway now links banks and non-bank financial institutions worldwide to facilitate expanding world trade and financial services, placing ever greater priority on banks of origin to establish the identity of beneficial owners and their sources of funds. There are few controls on electronic transfers, and, compounding the problem, the bank or non-bank of origin is increasingly based outside major financial centres in jurisdictions which do not adequately control money-laundering and other financial crimes.

93. The use of microchip-based electronic money for financial transactions, via smart cards and the Internet, are assuming a potentially important place in the domestic and worldwide payments system. These chip-based electronic cyberpayments are emerging very rapidly. Cyberpayments may soon become an addition to the major means of payment - currency, cheques, credit cards, debit cards and automated clearing-house transfers that are currently used to make purchases.

94. A significant feature of the new cyberpayments is that they include a new form of currency, a cybercurrency that is engineered to be an electronic emulation of paper currency. Cybercurrency includes the attributes of conventional currency: a store of value, a medium of exchange, a numeraire, anonymity and ease of use. But there are added features: transfer velocity (almost instant electronic transfers from point to point) and substitution of electrons for paper currency and other physical means of payment. This is obviously an innovative addition to the payments mechanism, but it requires close attention, since the use of microchip and telecommunications technologies add some significant new dimensions for law enforcement.

95. Reporting regulations must be completely redesigned to include the reporting of currency in electronic form moving to other countries via the Internet or across the border in a smart card or electronic purse. Law enforcement issues likely to arise in this area include fraud, counterfeiting and computer hacking. Moreover, high speed, worldwide transfers that are a facet of the cyberpayment technology add complexity to the ability of law enforcement to trace criminal activity and recover the proceeds from drug trafficking.

96. Regulators, money-laundering investigators and international policy-making bodies are facing profound challenges from a banking world which not only knows no geographic horizons and is open 24 hours a day, but is increasingly interconnected, as large transnational banks extend their reach not only through branch and subsidiary networks, but through correspondent relationships that cross the globe.

97. The concern is not with the growth or dominance of the largest banks, or the extension of their networks, but whether standards of prudential supervision are met at every juncture in this web of correspondent banking. The emergence of active financial service industries in every jurisdiction capable of becoming active players on the electronic highway of superbanking places ever more emphasis on vetoing transactions at the bank of origin. There is a lack of confidence that the scope of current know-your-customer policies is sufficient to cover most financial transactions at their point of origin.

98. The regulation of offshore banking is also a growing concern The assurance of absolute secrecy by many jurisdictions which license such facilities makes it possible for those facilities to be manipulated to move and conceal or generate illicit proceeds, and far too many questions remain about their regulation.

99. Attention is also being focused on the following problems: the counterfeiting of currencies and other monetary instruments, especially bonds; the boom in contraband smuggling; the buying of banks and other financial institutions by suspected criminal groups; the resort by criminals to the use of smaller, less-monitored banks; and the sophisticated use of such new phenomena as direct access and pass-through banking and electronic cash systems. Financial crimes and money-laundering are occurring with varying degrees of regularity in many jurisdictions, and some Governments still have not criminalized all forms of money-laundering. Some have not given sufficient regulatory authority to central banks and other institutions; many do not have adequate data systems to monitor trends and methods used in their territories; and many have not made adequate provision for mutual legal assistance.

100. It is important to bear in mind that money-laundering is essential to organized crime, which must convert its ill-gotten gains into usable resources. Profits that cannot be spent are no profits. Thus, it is essential that in an integrated and balanced approach, this aspect of the problem is duly taken care of. There has been considerable discussion in many international forums about the issue of extending the scope of predicate offence for money-laundering (which usually accompanies mandatory confiscation) from drug crimes to other serious crimes. This is particularly important, since predicate offences are a constituent part of money-laundering, and conviction will unavoidably require the proof of predicate offence.

101. In systems where confiscation is allowed only for specifically designated crimes, extending the scope of the predicate offence to the maximum extent possible would be quite effective for deprivation of illicit proceeds, while in systems where confiscation is allowed for all crimes in general, extending the scope of predicate offences is not necessarily vital, since effective deprivation of illicit proceeds is already possible if the predicate offence itself was thoroughly investigated .

102. In depriving of illicit proceeds, it is also very important to consider the ways of ensuring the interests of victims. In drug-trafficking crimes, as there is usually no victim, the deprivation of illicit proceeds solely by the Government will not cause serious problems. But, as regards other crimes, such as fraud and extortion, the interests of victims would be greatly damaged if only the Government benefits from the deprived assets. In this sense, when enacting legislation on the issue, it will be convenient to consider creating a system whereby the Government distributes confiscated assets to the victims. Such distribution could be limited only to victims who appear in the indictment.

103. Due consideration should be given as well to the enactment of regulatory provisions that could prevent the holding and concealment of illicit proceeds through administrative and preventive measures. In this regard, the review of the administrative measures to control financial institutions is essential.

IV. ACTION REQUIRED BY THE COMMISSION

104. The growth of organized transnational crime and the diversity of its activities suggest that an increasing amount of illicit proceeds would be directed at the world's financial systems. The problems facing policy makers, regulators and criminal justice systems are bound to be compounded by the increasing use of very sophisticated new technologies which provide an array of new opportunities for concealing and laundering criminal proceeds. In view of those trends, the particular needs of developing countries and of countries in transition will multiply and grow exponentially. The Division has already had an indication of this, in the form of a growing number of requests for assistance in the field of prevention and control of the laundering of the proceeds of crime. Consequently, the Commission might wish to devote attention to ways and means

of strengthening the capacity of the Division to undertake more operational activities in this area, in response to requests of Member States.

105. As mentioned above, the rapidly changing situation would make reliable information and knowledge more essential than ever, as a basis for efficient decision-making and effective concerted action at all levels. In view of the work already under way in both the Division and UNDCP in the collection of legislation, and given the clearing-house functions of the Division already mandated by the Council and the General Assembly, the Commission might wish to consider authorizing the Division to expand its information collection to the area of the prevention and control of the laundering of criminal proceeds. Such a function could be performed in cooperation with other international organizations, building on data collection instruments already developed by ICPO/Interpol and the Commonwealth Secretariat.

106. The Commission may also wish to encourage more coordination and cooperation among relevant international organizations, in order to improve advocacy and dissemination of information, and foster action against the laundering of criminal proceeds.

Notes

[1]*Official Records of the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 25 November-20 December 1988*, vol. I (United Nations publication, Sales No. E. 94.XI.5).